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91/2

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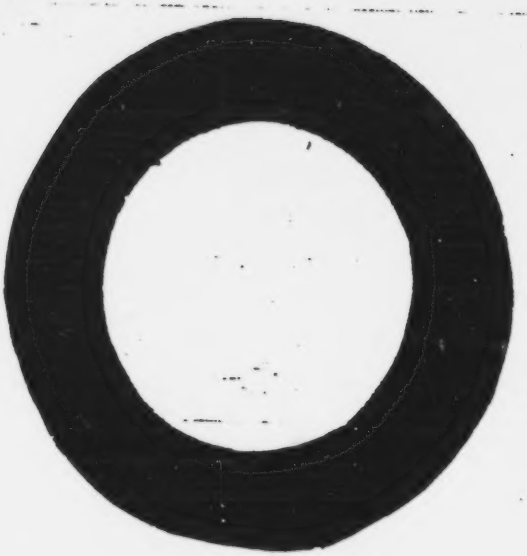

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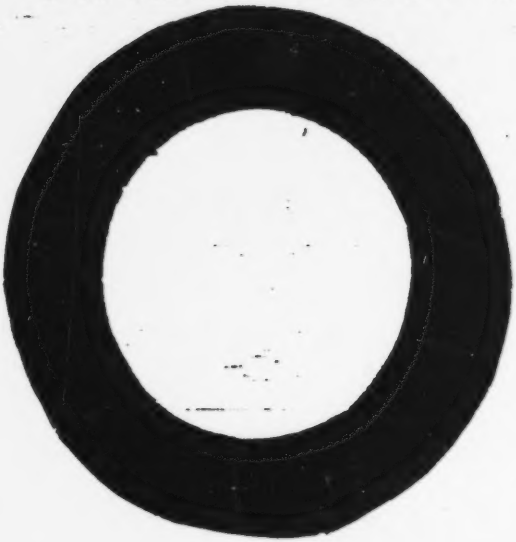

The legal framework of the Convention on the Rights of the Child

*Philip Alston**

I. Introduction: putting law into perspective

The Convention on the Rights of the Child differs from other comparable human rights treaties in a variety of ways. One of the most important is its emphasis upon the need for more flexible and innovative approaches to implementation than has thus far characterized approaches to the other treaties. In this sense the Convention as a whole, and article 42 in particular, recognizes that the development of popular awareness of "the principles and provisions of the Convention ... by adults and children alike" is an essential means by which it can be promoted.

On one level it is surely correct that an array of legislative and other formal measures of implementation will ultimately be less important and less effective than measures designed to inculcate the values enshrined in the Convention into the consciousness of the masses as well as of the decision-making élites. But at another level it is equally true that an appreciation of the legal framework within which those principles have been proclaimed is indispensable. In other words, if the Convention is to be a means of empowering children and those acting on their behalf, it is essential that the foundations of that empowerment be properly understood.

It is easy to dismiss the value of legalistic approaches to an instrument like the Convention. It is clear that any such legalism is of limited value and that it can readily be misused to stifle the inherent energy and persuasive powers of the Convention. But it must equally be remembered that it is by virtue of its recognition of specific legal obligations and its establishment of formal monitoring mechanisms that the Convention

* Professor of Law and Director of the Centre for International and Public Law of the Australian National University, Rapporteur of the Committee on Economic, Social and Cultural Rights. This analysis draws in part upon work done by the author in preparation of a Commentary on the Convention on the Rights of the Child to be published jointly by the Centre for Human Rights and UNICEF.

distinguishes itself from a whole host of merely aspirational and hortatory commitments that Governments have made, in other contexts, to children's well-being.

II. Identifying the legal core

The focus of this article is on the basic legal framework established by the Convention. Unlike most other human rights treaties, the Convention does not have a clearly identified set of umbrella provisions contained in a preliminary section or "part" of the text. But despite the absence of any such clearly delineated section, the Convention does contain an important core of general provisions which are of vital importance in interpreting the specific substantive rights laid down in its First Part. That core is contained in articles 1-5 and 41. Without an appreciation of these provisions, the nature of the rights and obligations formulated in articles 6 to 40 cannot be properly understood. What follows is an attempt to explore the meaning of some of the key provisions of articles 1-5 and to take account in that context of article 41. It does not purport to be a comprehensive or in any way definitive analysis.

III. Article 1: defining the beginning and end of childhood

Article 1 of the Convention defines who is to be considered a "child" for the purposes of the Convention. Existing international instruments tend either to fail to define the age-group in question or to apply a diverse range of cut-off points. The result is a pattern of inconsistency which defies any simple logical explanation. In that regard, however, international law is not significantly different from the domestic legal situation in the great majority of countries. Against this background, the Convention adopts a middle course. On the one hand, in terms of an upper age limit, it recognizes the need to establish a specific benchmark. This is set at 18. On the other hand, it permits Governments a degree of flexibility in determining lower age limits for specific purposes.

(a) *The beginning of childhood*

It is not at all surprising, given the diversity of opinion and the strength of feeling surrounding the issue of abortion, that strongly differing issues were expressed in the Working Group when it came to defining the age at which childhood begins for the purposes of the Convention. Competing proposals debated by the Working Group would have recognized the beginning of childhood as the moment of birth or, alternatively, from conception onwards. The final outcome, according to which age is

specified, was linked in part to a compromise reached for the inclusion of the following paragraph in the preamble:

> Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

But, notwithstanding this reference, the final wording reflected in article 1, which uses the terms "child" and "human being" without addressing the question of a lower age limit, was clearly intended to maintain maximum flexibility so as to enable potential signatories to the Convention to adopt whatever position they wished, for the purposes of their own domestic law, on the issue of the right to life of the foetus or unborn child. Had the Convention come down on one side or the other of this highly controversial issue, it would thereby have ensured that a large number of States would have felt themselves unable to ratify. The position adopted in the Convention thus conforms with that under other existing international human rights law. While recognizing (particularly in the preamble) that the foetus is deserving of appropriate protection, its right to life *per se* is not recognized. Moreover, the rights of the mother (including those to life, mental and physical health, and privacy) recognized by a wide range of other international human rights treaties are not able to be diminished by virtue of this provision. Matters such as family planning and abortion are therefore left to each State to deal with in light of its own perceptions of the most effective means of balancing the conflicting rights and interests involved.

(b) *The end of childhood*

Once a person attains the age of 18 years the provisions of the Convention are no longer automatically applicable to him or her. This age was selected in order to extend the Convention's scope to as large an age group as possible. But 18 is essentially an arbitrary age, not necessarily consonant with the age at which political, economic or other forms of participation begin in various countries. For that reason the majority of international instruments avoids defining the upper limits of childhood. In some it is made clear that the omission is entirely intentional. In others, where upper age limits have been set, they vary according to the purpose or context, from 14 or 15 years to 16 and above. Ultimately, however, the specification of 18 as the upper age limit was acceptable because of the flexibility provided by the final part of the article: "unless, under the law applicable to the child, majority is attained earlier".

Various alternative formulations were suggested but they were rejected primarily because they did not succeed in meeting the criteria which had emerged as being necessary:

(i) The establishment of a specific age to apply, in principle, across the board;

(ii) The acceptance of a relatively high age for that purpose in order to maximize the protection offered; and

(iii) The need for flexibility in terms of both the issue concerned and the cultural, religious, social and other circumstances in each State. The approach adopted in the Convention was considered to meet each of these requirements.

IV. Article 2: States parties' obligations and the principle of non-discrimination

(a) *Introduction*

This provision is much more than simply a non-discrimination provision. In general terms, it serves two closely related, but analytically distinct, functions. The first, and in some respects the most important, is to specify the nature of the basic obligation undertaken by States parties to the Convention with respect to all of the rights to each child. Linked to this function, the provision indicates those children with respect to whom each State party assumes obligations. Thus, the obligation applies to each child "within the jurisdiction" of the State concerned.

This function of article 2 is closely related to the role played by article 4. In conceptual terms, article 2 (1) is best thought of as the general statement of the "ends" to be achieved by the Convention (i.e. that all of the relevant rights be respected and ensured), while article 4 is the general statement of the "means" to be used (i.e. "all appropriate legislative and other measures").

The second function of article 2 is to ensure that the rights recognized shall be accorded to, and enjoyed by each child without discrimination based on any status which she or he might have or which her or his parents or legal guardians might have. For this purpose a number of specific statuses are listed but these are illustrative rather than exhaustive. As an extension of this function paragraph 2 seeks to ensure that a child is not discriminated against, or punished, on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.

(b) *Some key phrases in paragraph 1*

(i) "shall respect and ensure"

The obligation to "respect and ensure" is one of the foundation stones upon which the Convention is built. Along with the other general or "umbrella" obligations clauses contained in articles 3 to 5, article 2 plays a key role in delineating the precise scope and content of each State party's

obligations in regard to all of the individual rights recognized in the Convention.

While the words "respect" and "ensure" appear together in the same phrase, they are by no means simply repetitive of one another. In essence, the first has more passive and the latter more active connotations. In other words the passive obligation "to respect" requires a State party to refrain from any actions which would violate any of the rights of the child under the Convention. This is sometimes referred to as a "negative" obligation, but that term is potentially misleading. Thus, as the European Court of Human Rights has noted (in *Marckx* case of 1979), the principle of effectiveness (*effectivité*) will sometimes require that positive measures be taken by a State party in order to give full effect to a right which is formulated in primarily negative terms.

The obligation "to ensure" goes well beyond that of "to respect", since it implies an affirmative obligation on the part of the State to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights. This interpretation has been affirmed in terms of the provisions of the International Covenant on Civil and Political Rights, from which the language in the Convention is more or less directly taken.

(ii) "each child within their jurisdiction"

The purpose of this phrase is to define and limit those children whose rights are to be respected by any given State party. The phrase "within their jurisdiction" was included as a reflection of the drafters' clearly expressed desire to ensure the widest possible applicability of the Convention. It was proposed partly on the grounds that it reflected the approach adopted in the European Convention on Human Rights. The relevant jurisprudence of the European Commission demonstrates that the phrase is not to be interpreted in a narrow or formalistic fashion but rather by taking account of the existence of an appropriate degree of *de facto* authority and responsibility. In the context of other international instruments the United Nations has also tended to adopt a broad approach with respect to territorial applicability. Similarly, the Human Rights Committee has tended, if individual cases before it raised questions of jurisdiction, to adopt a position favouring the applicability of the Covenant.

The position of "aliens" in the territory of a State that has ratified the Convention is that they are covered in the same way as are the nationals of such a State. In general, the rights set forth in the Convention apply to everyone within the jurisdiction of a State party, regardless of whether the Convention has also been ratified by the State of nationality of the person concerned. Nationality or statelessness is thus irrelevant in this context. The only exception in this regard is where the Convention explicitly provides otherwise, as in article 22 (dealing with refugee children).

(iii) "without discrimination of any kind"

While the term "discrimination" is not defined in the Convention, guidance in that regard may be taken from other relevant international instruments that evidence greater specificity in their use of the term.

Following the approach of the Human Rights Committee, it may be suggested that, for the purposes of the Convention on the Rights of the Child, "discrimination" should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as a child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political of other opinion, national, ethnic or social origin, property, disability, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all children, on an equal footing, of all human rights and fundamental freedoms.

Without attempting an exhaustive analysis of the implications of this definition, several observations are in order. First, measures of affirmative action, or positive discrimination, might sometimes be warranted under the Convention. Secondly, the enjoyment of human rights "on an equal footing" does not mean identical treatment in all cases. Indeed, the entire Convention is predicated upon the assumption that children are entitled to special protection, over and above that accorded to many other members of society. Similarly, the Convention contains many provisions which specify grounds on which legitimate differentiation among children may be based (e.g. the evolving capacities of the child).

Thirdly, it may be noted that the definition is relatively far-reaching. Thus, for example, the act in question need not have been intended to discriminate; it is sufficient if it has that effect. Similarly, it does not need to deny a child's right completely; it is sufficient if that right is only "impaired".

(iv) The various types of status listed

Although a large number of specific grounds on which discrimination is prohibited are listed, the absence of any other particular ground does not necessarily mean that it is excluded. The paragraph ends, as do the comparable provisions of the International Human Rights Covenants, with the phrase "or other status". This is generally accepted as indicating that the grounds listed are intended only to be illustrative and should not be treated as being exhaustive.

Although specific proposals to prohibit discrimination against children born out of wedlock were ultimately withdrawn, a review of the text of various other international instruments, and of the interpretations accorded to them, indicates that there are very strong grounds for rejecting any form of discrimination against a child on the basis of his or her having been born out of wedlock.

(c) *Paragraph 2*

The Convention makes an important contribution to international human rights law by emphasizing that the protection accorded to the child should clearly include all situations in which the child is, or risks, being discriminated against or punished on the basis of the attributes of behaviour of other persons. There is no shortage, either in the annals of each country's own domestic experience or in terms of problems raised in international human rights bodies, of cases in which children have suffered physically, mentally and in other ways as a result of actions for which they personally bore no responsibility whatsoever. Children are often easy targets, in many cases more so than their parents, family members or guardians. Moreover, discriminating against or punishing a child is an effective way of "killing two birds with one stone". The child suffers directly but the parents or others responsible for the child also suffer, albeit perhaps indirectly. Paragraph 2 of this article is specifically intended to address such practices and to make clear that they are entirely unacceptable under international law.

V. Article 3: best interests, responsibility for care and protection and standards of care

(a) *The child's best interests*

The phrase "the best interest of the child" appears in a variety of contexts throughout the Convention. In particular, it is used in relation to: the separation of the child from the family setting (art. 9); the upbringing and development of the child (art. 18); adoption and comparable practices (arts. 20 and 21); and the child's involvement with the police and the justice system (arts. 37 and 40).

Its use in article 3 (1), however, is of particular importance since this is an umbrella provision which purports to prescribe the approach to be followed "in all actions concerning children". It is for this reason that it will often be invoked in conjunction with other articles of the Convention in order to support, justify or clarify a particular approach to issues arising under the Convention. It will be of special relevance and importance whenever there is an apparent or a real conflict between two or more rights recognized in the Convention and when a situation is not otherwise explicitly covered by the Convention.

Simply by using the phrase, the drafters of the Convention were not breaking any new ground. It has long been used in both domestic and international law contexts and there is no shortage of scholarship devoted to analyses of its potential meanings both as a principle of general relevance and in relation to specific issues such as child custody.

At the international level the principle has been included in the 1959 Declaration of the Rights of the Child, the 1979 Convention on

the Elimination of All Forms of Discrimination against Women and the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

The principle has nevertheless been criticized by scholars and others, especially on the ground that it is open-ended or indeterminate. In other words, it is suggested that its application in a given situation will not necessarily lead to any particular outcome. The problem is how to identify the criteria that should be used to evaluate alternative options that are open to a decision-maker seeking (or purporting) to act in the child's best interests. One commentator has expressed it thus:

> The choice is inherently value-laden; all too often there is no consensus about what values should inform this choice. These problems are not unique to children's policies, but they are especially acute in this context because children themselves often cannot speak for their own interests.
>
> . . .
>
> Even if predictions as to the consequences of policy alternatives were possible, what set of values should a judge use to determine a child's best interests. ... He must have some way of deciding what counts as good and what counts as bad (Mnookin, *In the Interest of Children*, 1985).

But this very criticism helps to explain both the role and the significance of the principle stated in article 3 of the Convention that "the best interests of the child shall be a primary consideration" in "all actions concerning children". The Convention as a whole goes a long way towards providing the broad ethical or value framework that is often claimed to be the missing ingredient which would give a greater degree of certainty to the content of the best interests principle. It provides a carefully formulated and balanced statement of values to which States parties have formally subscribed. The Convention does not seek to provide any definite statement of how a child's interests would best be served in a given situation. Any such pretension would be misplaced. It is clear that the precise implications of the principle will vary over time and from one society with its own cultural, social and other values and realities to another. It is to be essential that the Committee on the Rights of the Child will, in the course of time, be able to identify some more precise guidelines to assist States parties to give content and direction to the principle in specific contexts. In the meantime, the Convention itself provides a wealth of signposts capable of guiding those seeking to identify what is in the best interests of the child.

At the drafting stage considerable debate centred on whether the "best interests" principle should be "a primary" or "the paramount" consideration or might be better described in some other way. While the term "a primary" is used in article 3, in other cases when the term is used in the Convention the term "the paramount" is generally applied.

In the context of article 3 (1) it is clear that the use of the words "a primary" should not be interpreted in any way as a rejection of the overall principle that actions should always be taken in the best interests of the child and the taking into account of the child's rights. On the contrary, the *travaux préparatoires* reveal unanimous support for this principle. The objective implicit in opting for the words "a primary" is to ensure that there is sufficient flexibility, at least in certain extreme cases, to enable the interests of people other than children to prevail. Nevertheless, the formulation adopted makes clear that the burden of proof would be on those seeking to follow such an approach to demonstrate that, under the circumstances, no other acceptable alternative exists.

(b) *Paragraph 2*

This provision is of fundamental importance. Its significance derives in the first place from its position as an umbrella provision directed at ensuring, through one means or another, the well-being of the child. Secondly, its comprehensiveness means that it constitutes an important reference point in interpreting the general or overall obligations of Governments in the light of the more specific obligations contained in the remaining parts of the Convention. The obligation which is explicit in the undertaking "to ensure the child such protection and care as is necessary for his or her well-being" is an unqualified one. While the next phrase makes it subject to the need to take account of the rights and duties of other entities, the obligation of the State party, albeit as a last resort, is very clearly spelled out. The verb used to describe the obligation ("to ensure") is very strong and encompasses both passive and active (including pro-active) obligations. The terms "protection and care" must also be read expansively, since their objective is not stated in limited or negative terms (such as "to protect the child from harm") but rather in relation to the comprehensive ideal of ensuring the child's "well-being". Moreover, the use of the child's "well-being" as the basic benchmark would seem to imply as comprehensive an obligation as possible.

By the same token, it is important to note that the obligation assumed by States parties pursuant to this provision is not to ensure the well-being of the child *per se*, which would be an obligation that would go beyond the capacity of any Government, but is rather limited to providing "such protection and care as is necessary" for that purpose.

It should also be noted that this undertaking by the States parties is not simply a restatement or reiteration of the specific obligations undertaken under subsequent provisions of the Covenant. Rather, it is of general application and thus serves to fill in any gaps or lacunae left by the latter. Thus, if a child's well-being is denied by virtue of an act or omission which is not specifically proscribed in the Convention, the State party would none the less be under an obligation, pursuant to this umbrella provision, to take "all . . . appropriate measures".

(c) *Paragraph 3*

This paragraph seeks to ensure that the staff and facilities involved in the formalized care or protection of children shall meet appropriate health, safety and other standards as determined by the appropriate national or local authorities.

VI. Article 4: measures of implementation

As is the case with each of the first five articles, this is an umbrella provision of major importance for the entire Convention. Its role is perhaps best understood by recalling the distinction, commonly used in international law as well as in civil law systems, between obligations of result and obligations of conduct. Whereas article 2 (1) prescribes an obligation of result (i.e. to "ensure the rights set forth ... without discrimination"), article 4 prescribes an obligation of conduct. It obligates States parties to take all of the "appropriate legislative, administrative and other measures" that are necessary for the implementation of each of the rights recognized in the Convention. Together they constitute the most important statements in the Convention with respect to the nature and scope of the obligations undertaken by States parties.

(a) *The obligation to "undertake" measures*

This phrase applies to all of the rights recognized in the Convention. It constitutes a solemn undertaking to take the measures identified in the phrase that follows it. The obligation to undertake the measures is of immediate application and cannot be deferred until a more propitious moment. Moreover, the obligation is not subject to the availability of resources. It is clear that the extent to which a State party will be able to ensure the full enjoyment of many of the rights will vary according to resource availability but, for the most part, this problem is addressed by the second sentence in article 4 which limits the obligation in the case of economic, social and cultural rights. In the case of the remaining rights, resource constraints inevitably constitute a very important factor in determining how to proceed towards implementation but they do not in any way limit or cancel out the obligation to do so.

The determination of which measures are "appropriate" for these purposes is, in the first instance, solely a matter for the State party concerned to decide for itself. In other words, there is no preordained or prescribed set of measures that will be appropriate in all circumstances at all times. Nevertheless, the implementation measures laid down in part II of the Convention are designed to establish an element of accountability and, within the framework established thereunder, consideration will be given by the Committee on the Rights of the Child to the twin questions of

whether the phrase "all appropriate legislative, administrative and other measures" gives rise to a number of important questions which must be addressed in order to determine the full extent of the resulting obligations.

While reference is made to "legislative" measures, it should not be assumed that all of the provisions contained in the Convention necessarily require legislation to be adopted. Whether or not legislation is an "appropriate" measure is a matter for each State party to decide for itself in the light of all the circumstances. There are, however, some issues with respect to which it would be difficult to argue that all appropriate measures had been taken in the absence of any legislative action. This is clearly the case in respect to matters which are already dealt with in a State's existing legislation and where changes are required in order to ensure conformity with the provisions of the Convention.

Similarly, while measures to ensure that some or all of the rights recognized in the Convention are given constitutional recognition may be highly desirable, the Convention contains no such requirements *per se*. It is silent as to constitutional measures. Nevertheless, it may be thought that existing (or proposed) constitutional practice in a given State militates strongly in favour of considering constitutional measures to be highly appropriate for this purpose.

A question of particular importance in relation to the Convention is whether the adoption of appropriate legislation alone is sufficient to fulfil a State party's obligations under this provision. That the answer is in the negative is clearly attested to by the wording of article 4, which uses the conjunctive "and" rather than the disjunctive "or". This view is also confirmed by the *travaux préparatoires*.

A related issue is whether judicial or other remedies for the enforcement of the rights recognized should be provided. The Convention is silent on this issue.

(b) *Economic, social and cultural rights*

The Convention does not specifically indicate which of the rights recognized can be deemed to be economic, social and cultural rights for the purposes of this provision. In essence, there are two indicators that may be used. The first is the presence of phrases which constitute "resource qualifiers" in the body of various articles. Thus, for example, phrases such as "subject to available resources" (art. 23 (2)) and "free of charge, whenever possible" (art. 23 (3)), are a good indication that the right has an "economic and social" component. The second indicator is a significant similarity between the formulation used in the Convention and a right recognized in the International Covenant on Economic, Social and Cultural Rights.

This phrase is modelled on the equivalent formulation used in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, as was clearly acknowledged during the drafting process. In seeking to understand its implications, it is therefore appropriate to consider the approach that has been adopted in the latter context. It is clear that resource allocation decisions remain the full responsibility of the States parties themselves. By the same token, however, the overall decisions taken by those States are not completely immune from scrutiny by the international body charged with supervising States parties' compliance with their treaty obligations. It has been noted that, "while the Covenant itself is, inevitably, devoid of specific allocational benchmarks, there is presumably a process requirement by which States might be requested to show that adequate consideration has been given to the possible resources available to satisfy each of the Covenant's requirements, even if the effort was ultimately unsuccessful".

(c) *The relevance of "international co-operation"*

This article obligates States parties to take all necessary measures towards the realization of economic, social and cultural rights "and where needed, to do so within the framework of international co-operation". It thus has several dimensions. In the first place it constitutes a general commitment to the principle of international co-operation, in accordance with long-standing principles of international law. Secondly, it reflects a commitment on the part of States that are not in a position to ensure full enjoyment of economic, social and cultural rights on the basis of their own resources to take necessary additional measures "within the framework of international co-operation". Finally, it also represents a commitment by other States to co-operate in order to assist those States parties whose resources are not sufficient towards the goal of assuring respect for the rights in question. The obligation to co-operate can be respected in a variety of ways and cannot readily be translated into any generally applicable list of necessary actions. Its content will vary according to the circumstances.

In considering the role in international co-operation under the Convention, it should be borne in mind that there are a number of other provisions that address the same issue. In general, these fall into three different categories. The first group tends to repeat article 4's general commitment to co-operate, but to do so in respect of a particular field. This group includes article 23 (4) relating to disabled children, article 24 (4) relating to health and article 28 (3) relating to education. The second group consists of provisions calling for specific forms of international co-operation such as the drawing up of international agreements and the undertaking of bilateral negotiations. This group includes article 21 (*e*) relating to intercountry adoption, article 27 (4) relating to child maintenance and article 35 concerning child abduction and related matters. The

third group consists of the provisions contained in part II of the Convention, and specifically article 45, by virtue of which the Committee on the Rights of the Child is able "to encourage international co-operation in the field covered by the Convention".

VII. Article 5: parental guidance and the child's evolving capacities

(a) *Respect for the responsibility, rights and duties of parents and others*

Article 5 does not constitute a comprehensive recognition of the "responsibilities, rights and duties of parents" (or other relevant persons) *per se*. Rather, it requires States parties to respect the responsibilities, rights and duties of parents "to provide . . . appropriate direction and guidance in the exercise *by the child* of the rights recognized" in the Convention (emphasis added).

There are a number of reasons why the Convention does not attempt to spell out, in any comprehensive way, the responsibilities, rights or duties of parents or others.

First, as pointed out in the *travaux préparatoires*, the Convention is concerned solely with the rights of the child and any other matters that are dealt with arise only in that context. Similarly, to the extent that they are dealt with, it is only insofar as is required for the purposes of the Convention. Had the Convention sought or purported to deal comprehensively with the rights or the duties of parents, or others concerned, it would have been a very different enterprise. Moreover, the assumption appears to have been that existing human rights instruments already provide adequate protection for the rights of parents and other relevant care-givers. Another reason for not seeking to spell out in any detail the duties or responsibilities of those persons is that human rights instruments generally have tended to avoid the statement of duties. Thus, in the United Nations context, article 29 (2) of the Universal Declaration, the terms of which are also reflected in the Preamble of each of the International Human Rights Covenants, is probably the most important of all statements of duties. The situation is somewhat different at the regional level where, for example, the American Declaration of the Rights and Duties of Man, and the African Charter on the Rights and Welfare of the Child include significant provisions relating to duties. In general terms, there are at least two reasons for not going into detail on this issue. The first is that duties are, in the great majority of cases, not under threat and are thus not in need of the protection to be offered as a result of their recognition in an international instrument. Moreover, States parties retain their sovereign rights within the framework of their own constitutional and legal systems and on the basis

of respect for applicable human rights standards, to impose whatever duties they consider appropriate upon their own citizens. An international instrument is not required for that purpose. The second reason, which applies specifically in the context of treaties rather than of non-binding declarations, is that while States undertake duties or obligation by virtue of becoming parties to a treaty, that treaty cannot purport to impose, directly, any duties upon other entities.

(b) *"Responsible" persons*

The clear intent of this provision is to ensure, within very broad limits, that whoever is primarily responsible for the child, whatever the nature of their exact legal relationship to the child, will be covered by the terms of the article. By the same token, the formulation used is not entirely open-ended and while the great majority of primary care-givers (to use a neutral term) would seem to be covered, there may well be individual situations with respect to which this is not the case.

In general terms the definition given to the term "parents", in the context of article 5, would often seem not to be a matter of major importance for the simple reason that the list of persons placed in the same situation as parents for the purposes of the article is so broadly defined. This is not the case, however, in relation to many other articles in the Convention and it is in that broader context that the issue is likely to assume its greatest significance. In that regard there would seem to be strong policy reasons, based on the approach adopted in article 5, as well as in keeping with the spirit of the Convention as a whole, for encouraging a broad and generous interpretation whenever that appears to be in keeping with the child's best interests.

The reference to "the extended family or community as provided for by local custom" was inserted in order to accord adequate recognition to the role of the extended family and community in circumstances in which parental care is not available.

The article does not, however, apply automatically to every "extended family or community". That phrase is directly qualified by the phrase "as provided for by local custom". Thus, in a situation in which the notion of the responsibility of the extended family or of the community for a child is not recognized by local custom, the article would not be applicable. By the same token the concept of "local custom" would appear to have been intended to be relatively informal in nature.

(c) *The child's "evolving capacities"*

This phrase reflects the delicate balance between the rights of children and the correlative rights of parents. By recognizing that the child's capacity properly to understand and exercise his or her rights will evolve as he or she increases in age, article 5 seeks to reflect the fact that, while

parents will have a leading role to play when the child is very young, it will lessen as the child grows older. In other respects parents' rights in bringing up their children are protected in article 18.

The preference for not using a phrase such as "evolving capacities" indicates an intention not to be drawn into the setting of arbitrary age limits or definitions of "maturity" which would, in any event, need to deal with a larger range of issues than could ever be meaningfully or appropriately specified in the context of an international treaty. Moreover, the fact that the principle applies to all rights recognized in the Convention means that it will draw additional content in specific contexts.

(d) *"Appropriate direction and guidance"*

The original formulation of this phrase referred only to the provision of "direction to the child". Presumably, the addition of the latter term was intended to indicate that the influence of parents and others need not always take the form of "direction" *per se* but should often be in the form of "guidance". The connotation of the latter term is somewhat "softer" and is likely to be more in keeping with the approach used in later parts of the Convention in dealing with specific rights. The word "appropriate" would also seem to constitute a rather important qualification to the type of direction and guidance that can be provided by parents and others in conformity with the Convention. It effectively removes any suggestion that such care-givers enjoy *carte blanche* to provide any type of direction they believe fitting. Rather, it introduces an objective element of appropriateness.

Non-governmental organizations and the United Nations Convention on the Rights of the Child

*Nigel Cantwell**

Non-governmental organizations (NGOs) working internationally in the field of human rights are concerned to a large extent with international law contained in United Nations treaties, and in particular with monitoring respect for the human rights contained in those instruments. NGOs have also had some degree of influence on the content of international treaties, and in certain cases they have undertaken the task of promoting public awareness of a particular instrument or of human rights law in general.

There is agreement, however, in governmental and non-governmental circles alike, that the contribution of the NGO community to drafting and promoting the Convention on the Rights of the Child has broken significant new ground. This could and should have positive implications for the future, both in terms of the implementation of this particular treaty and of any further development of international human rights standards that might be undertaken. It is therefore worth while to examine the history of NGO efforts related to the Convention to assess their contribution and to consider their potential ramifications for the future.

While this article looks more especially at the results of inter-NGO co-operation at the international level, the impact of non-governmental bodies, individually and collectively, at the national and regional levels with regard, in particular, to the promotion of the Convention is also considerable and also merits examination.

The growth of NGO co-ordination

As early as 1979, when the United Nations Commission on Human Rights set up a special "open-ended" Working Group to review the Polish proposal for a Convention on the Rights of the Child and to draw up a definitive draft text, there was some attempt to foster inter-NGO co-operation on this question. Accredited NGOs could attend the Working

* Director of Programmes, Defence for Children International (DCI).

Group sessions (which were, in any case, public)—although it was left to the discretion of the Group and its Chairman to determine if and when they would be allowed to take the floor—and a written statement co-sponsored by several NGOs was submitted at a very early stage.

It seems, however, that there was a feeling of considerable frustration among NGO representatives during those early years. Very few had had previous experience of working within this kind of context. They knew that they had the potential to make a major contribution, but feared that they—and children—were being discounted because of an inability to make their concerns known in an appropriate and effective way. Although individual NGOs were given the floor almost every time they requested it, all too often they were unable to take advantage of these valuable opportunities. Their statements tended to be spontaneous and reactive, whereas they needed to be more carefully prepared. In addition, there was no cohesion in the NGO approach. Consequently, the influence of the NGOs on the draft articles adopted in the first five years was somewhat limited, restricted essentially to the results obtained individually by a very small number of experienced human rights organizations.

It was in this climate that some of the NGO representatives present at the 1983 meeting of the Working Group decided that a change should be wrought—or at least sought. With logistical assistance from UNICEF-Geneva (particularly its NGO Liaison Officer), they convened an "NGO Consultation" in May of that year. Over 20 NGOs were represented, and the major decision from the meeting was that NGOs interested in the Convention should form themselves into an *ad hoc* group, in order primarily to foster remedies to the two major ills identified in NGO efforts to date: lack of preparedness and lack of a coherent NGO stand. The NGO Group, thus formed, needed a "focal point", and elected Defence for Children International (DCI) to serve as its secretariat. A further meeting was called later that year, and the Group came up with joint proposals on a number of articles that were due for consideration at the January 1984 session of the Working Group. These proposals were set out in a written report which was made available to the delegates at the session. The effect was immediate and considerable. The proposals made in the report—which was unofficial, in that it had not been submitted through the Centre for Human Rights—were referred to during the debates; the NGOs were asked to explain certain aspects of their proposals and individual delegates came over to discuss specific issues in sum; the ground was laid for substantially improving NGO input and impact.

Encouraged by this result, the NGOs again met twice during 1984. In addition to producing a report containing their proposals, they refined their strategies and, in particular, organized the first of what were to be annual "briefing meetings" for representatives of Permanent Missions in Geneva. In this way, country delegates could be briefed prior to the Working Group's meeting and could, therefore, take the NGOs views into

account when their country's position was being determined. The six-monthly Group meetings, the annual briefings for Permanent Missions, and the submission of written proposals to the Working Group were maintained throughout the remaining years of the drafting process.

Over the years, the NGO Group grew rapidly in size, eventually comprising some 60 "participating organizations" (there was no formal membership as such). The range of expertise and experience covered was vast, for the Group included not only specialist children's organizations such as DCI, the International Catholic Child Bureau and the International Save the Children Alliance, but also human rights NGOs (Amnesty International, Anti-Slavery Society, International Commission of Jurists, etc.), religious organizations, professional associations, youth movements, social welfare organizations and women's groups.

The impact of the Group

The breadth of the expertise on which the NGO Group could draw goes a long way to explaining how it came to have an impact in so many of the fields covered by this unusually comprehensive treaty. In fact, at least 13 substantive articles or paragraphs in the approved text of the Convention were initially suggested by the NGOs.[1] Examples are article 39 regarding States' responsibilities towards child victims of exploitation and injury, and paragraph 3 of article 24 concerning the abolition of traditional practices prejudicial to health. The NGOs also had a significant impact on the formulation, form or content of a similar number of articles,[2] including 19 (abuse and neglect) and 32 (exploitation of child labour). The fact that articles 37 (torture and deprivation of liberty) and 40 (administration of juvenile justice) figure in the Convention in such detail and as separate provisions is also the result of an NGO initiative.

The NGOs' proposals were not limited to the substantive articles. The Group developed a draft text for what are now articles 42 and 45, and several of their ideas are reflected in the adopted provisions. These include such fundamental elements as the obligation of States parties to make the Convention known to children and adults in their respective countries (article 42), and certain roles given to the Committee on the Rights of the Child, UNICEF and "other competent bodies" (a term which, as the *travaux préparatoires* show, includes NGOs) in article 45.

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[1] Articles for whose inclusion the NGOs were basically responsible were the following: 9 (paras. 3 and 4), 24 (para. 3), 28, 29 ((*d*) and (*e*)), 30, 34, 35, 37, 38 (para. 4), 39, 41, 42 and 44 (para. 6).

[2] Articles whose formulation, form or content on which the NGOs had direct impact were the following: 8, 13, 16, 19, 20 (para. 3), 23, 25, 27 (paras. 3 and 4), 28, 29, 32, 33, 40 and 45.

At the same time, of course, there were also many instances where the NGO Group failed to convince the government delegates. The most notorious of these was the question of the participation of children aged 15 to 17 in armed conflicts (article 38) which, despite massive pressure from NGOs and others, is not outlawed by the Convention. (Somewhat ironically, it had been the NGOs which had first suggested the inclusion of a provision on the protection of children in armed conflicts.) It also proved impossible for the NGO Group to secure the explicit prohibition of medical experimentation on children, though some comfort in this regard can be found in the global protection of children from all forms of exploitation contained in article 36, which would surely cover such an act.

More than drafting

Over the years, the role of the NGO Group rapidly expanded to take in not only contributions to the draft text as such but also promotion of knowledge about, and support for, the future Convention.

Beginning in 1987, the NGOs, both as a group and individually, became more and more involved with organizing and sponsoring meetings at all levels and throughout the world, aimed at making the future Convention and its importance known. Many devoted considerable space to it in their publications. Together, they advocated that special priority should be given to the appropriate formulation and timely adoption of the treaty. More or less rapidly, attitudes and policies regarding the Convention underwent considerable change within some individual NGOs as a consequence of their involvement in the Group. Never before had so much interest and support been aroused in an international human rights treaty whilst still at the drafting stage.

Through this awareness-raising exercise and contact with government representatives, both during and outside the Working Group meetings, the NGOs were instrumental in convincing States and delegates to take the Convention more seriously. There was a gradual increase in the number of countries participating, whereas the general feeling had been that the Convention would suffer from decreasing priority as the lengthy drafting process continued. State delegates tended to be better briefed. The NGOs managed to rekindle the waning enthusiasm by constantly demonstrating that drafting the future Convention was not "just another academic exercise" but the development of a vitally needed tool for the protection and welfare of almost half of the world's population. In 1987, they advocated, together with UNICEF, a target date of 1989 for completing the Convention. The aim was to give a renewed sense of purpose to the drafting, which at that time looked as though it might continue for many more years, with the danger that States might become disenchanted with the whole project. Whilst the level of its impact could of course never be

quantified, there is little doubt that the NGO Group had an influence on the drafting process by constantly underlining the importance of the work in these various ways.

The NGOs were also partly—some would say largely—responsible for the fact that UNICEF began to become involved in the process. Having benefited from that agency's assistance from the very start, the NGO Group pushed and pulled UNICEF to take on a more active role. By 1986/87, their efforts were rewarded, and UNICEF went on to become an unequivocal and high-profile advocate of the Convention, bringing to bear the resources and special influence that an intergovernmental agency can call up. Co-operation between UNICEF and the NGO Group in fact reached such a level that there is still a belief in certain circles that the Convention is essentially the fruit of a joint UNICEF-NGO effort which was submitted to the United Nations for approval.

It is worth mentioning at this point an unscheduled yet important result of all these moves: instead of remaining simply the affair of a closed circle of diplomats and international lawyers, the Convention gradually took its place in an interdisciplinary and public domain. The ramifications of this should be particularly felt now when emphasis has turned from drafting to implementation since, given their long-standing involvement, an unprecedented number of individuals and organizations already feel committed to "making this Convention work".

Learning from the experience

One of the main points on the agenda of the May 1989 meeting of the NGO Group (the first following the approval of the Convention by the Commission on Human Rights) was a preliminary evaluation of the Group's experience. The aim was essentially twofold: first, to identify some of the "lessons" that might be passed on regarding inter-NGO co-operation, NGO impact within the United Nations system and NGO co-operation with Governments and the United Nations; and secondly, to evaluate the need for the continuation of NGO co-ordination in the "post-adoption" phase.

In addition to a wide range of factors seen as instrumental in the relative success of its work, the NGO Group felt there were three preconditions which had enabled it to maintain and develop its action without falling prey to the dangers that so often jeopardize inter-NGO co-operation: loss of momentum, loss of direction, fundamental policy disagreements, etc. These were:

The clear focus and target of the Group's work. It was not a general alliance for children's affairs, but a grouping set up to accomplish a well-defined task in response to a felt need common to all those participating;

The implicitly time-limited nature of its work. Since the basic task was that of contributing to drafting the Convention, once the text was adopted, the Group's *raison d'être* would in principle disappear;

The availability of adequate financial support to ensure effective operation, bearing in mind that the nature of the Group's activity meant in any case that the level of outside resources required was relatively limited.

One might justifiably add a fourth precondition to this list: the fact that the tasks of the NGO Group were limited to activities that could not be carried out—or at least by no means as effectively—by its members individually. The growing number of organizations taking part in the Group therefore had no "territorial" fears and were, on the contrary, convinced that pooling their experience and efforts was essential to achieving the desired results.

These preconditions and other factors were of course taken into account when the Group began looking at what role, if any, it should play after 20 November 1989. There was a paradox in so doing, of course: the Group had already decided that the time-limit on its activity had been an important element of its success, yet here it was envisaging a prolongation as soon as that limit was reached. None the less, there was a clear feeling among the NGOs that their six years of co-operation could not simply be terminated without considering possible joint action in the future.

The Group's role in the future

The Group therefore drew up a long list of all activities that could usefully be undertaken by NGOs in relation to the promotion of the Convention and of the rights it contains. It then proceeded to eliminate those that did not require formal or structured co-operation, and those that would in fact be best carried out by each NGO individually, in accordance with its own approach and constituency. Evaluating and assigning priorities to the tasks that remained, the Group decided that it should play an ongoing role in two areas in particular.

The first of these was to be short-lived, but for very positive reasons. The Group had, not unnaturally, felt that it should be active in promoting the signature and ratification of the Convention. The unprecedented avalanche of signatures and ratifications notified as of the moment the Convention was opened for signature, further spurred by the World Summit for Children in September 1990, rapidly made it clear that major and global efforts to persuade States to ratify would not be necessary. It would be sufficient to foresee the possibility of organizing *ad hoc* campaigns—particularly at the national level—in specific countries where ratification was contested or neglected by the authorities.

Hindsight seems to indicate that the NGOs had in fact already accomplished what needed to be done in favour of ratification without actually realizing it. That there was such a high level of interest on the part of Governments to demonstrate quickly their adherence to the Convention was doubtless due partly to the fact that few would want to be perceived as being disinterested in children; it was also partly perhaps because the Convention was deliberately drafted—especially through the emphasis laid on international co-operation and technical assistance in the implementation of the rights it contains—in a way to encourage the widest possible range of States to become party to it. But it was also surely due to the public awareness and pressure that had been built up well before the adoption of the Convention, and in which the NGO Group had played a significant role. In addition, the World Summit for Children stimulated a large number of ratifications. The Summit resulted from a UNICEF initiative stemming directly from the agency's involvement with the Convention, and this involvement of course—as noted above—was largely due to the formal and informal exhortation of the NGOs.

The second major activity of the reconvened Group was to be promoting and co-ordinating the submission of information on children's rights issues to the United Nations. The aim was to put at the disposal of the most appropriate human rights body, according to the question concerned, the greatest possible amount of pertinent information—including recommendations—in a coherent and co-ordinated manner. This is a natural development of the Group's role during the drafting process, when it noted the importance of providing concise and practical data and opinions backed by a wide range of NGOs.

This co-ordination effort is now well under way. For example, nearly 30 NGOs co-sponsored a joint statement on the Convention at the 1990 meeting of the Commission on Human Rights. The Group has set up sub-groups on specific themes—such as exploitation, children in conflict with the law, and child refugees/children in armed conflict—with a designated convenor to prepare NGO contributions to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, its Working Groups on Contemporary Forms of Slavery and on Detention, as well as to Special Rapporteurs and, in due course, to the Committee on the Rights of the Child. The Group also set up a task force to develop an NGO paper proposing various elements for the consideration of this Committee when it determines its rules of procedure; it is also working on the formulation of reporting guidelines which will also be submitted to the Committee.

It will obviously be important, now that the Convention exists, for the NGO Group to maintain its presence in selected human rights bodies in addition to working with the Committee on the Rights of the Child. The latter will have a special role to play, more especially with regard to the

situation of children in countries which are States parties, as well as to the formulation of general comments and interpretations concerning specific rights of the child. But the roles of the Sub-Commission, its working groups and the special rapporteurs in relation to children's rights will in no way be diminished because of the existence of the Committee, any more than they are in the case of human rights that fall within the purview of the specific treaty bodies. The NGO Group will, on the contrary, be mindful of the need to advocate strongly the greatest possible concertation of efforts by all of these bodies—and indeed others—as a vital means of maximizing the impact of the Convention, and of protecting the rights it sets out.

The flow of information between the Group and the concerned United Nations bodies is not, in fact, conceived as a one-way process. The aim is to enable the NGO Community—and its constituencies at all levels—to be aware of pertinent developments taking place within the United Nations system. One means of achieving this is via the six-monthly meetings of the Group—which are continuing—to which representatives of the Centre for Human Rights, along with UNICEF delegates, are systematically invited to attend and to give an account of progress and plans in their Convention-related work. In this way, the Group is better placed to make its contributions appropriate and timely, as well as to take any specific initiatives that it deems desirable.

It is therefore hoped that the partnership developed during the drafting process, among NGOs and with the intergovernmental bodies and government representatives, can be built upon and reflected during the implementation phase. The Convention itself indeed promotes such co-operation, and the realization of the rights it contains will depend greatly on the extent to which there is effective "pulling together" at all levels.

Implications of the co-ordination experience

Despite the understandable emphasis now being placed, in the human rights sphere, on the implementation of existing standards rather than on the development of additional treaties and declarations, the work of the NGO Group will no doubt provide a number of useful pointers and guidelines for non-governmental organizations involved in future drafting processes, not necessarily within the United Nations context. Although on a much smaller scale, a number of NGOs are, for example, pooling their energies in regard to the formulation of a convention on inter-country adoption, currently being drawn up under the auspices of The Hague Conference on Private International Law. DCI is one of the organizations involved, and it drew heavily on the NGO Group's experience in this regard.

None the less, it is more probably in regard to the wider framework of United Nations NGO interaction—including, of course, the monitoring of respect for this Convention—that the experiment in collaboration can be of special use.

Of the many features of the NGO Group experience, the partnership approach—among the NGOs themselves, of course, but also with intergovernmental bodies and Governments—has been fundamental and essential to virtually all the achievements of the Group.

Among the NGOs, this meant working together in a spirit of mutual respect for each one's special expertise or viewpoint, whilst making every effort to come to and maintain a joint position on given issues. Inter-NGO co-operation should never be such as to put into question or jeopardize the independence of each NGO. The aim is not to force a common standpoint but wherever possible to achieve agreement when a joint approach is deemed potentially more effective than an individual *démarche*.

The NGO Group's work with intergovernmental organizations and Governments involved an attitude of realistic co-operation, rather than a determination to maintain at all costs a distinct and rigid NGO stand. Of course, a partner relationship with Governments should never be allowed to weaken the promotion and defence of the basic values of NGOs, collectively or individually. But a non-aggressive, technical approach can clearly be considered, prima facie, as a potential means of attaining a given goal consonant with those values.

The need for partnership has been clearly demonstrated in other spheres of United Nations NGO activity, and was reaffirmed at the World Summit for Children in regard to the realization of the rights of the child. Obviously, the experience of the NGO Group for the Convention on the Rights of the Child is by no means "definitive", but it does provide a further example of the fact that, despite all the well-known problems, NGOs can work together effectively in the United Nations context.

The Convention on the Rights of the Child: A challenge for UNICEF

*Daniel O'Donnell**

The convention and international co-operation in favour of the rights of the child

The Convention on the Rights of the Child is unique among human rights instruments, in that it stresses international co-operation in the implementation of the rights it contains. The need for international co-operation is expressly recognized in a wide range of articles, including those concerning culture, education, health, adoption, child support, custody disputes, refugees and traffic in children. Transcending these specific references is paragraph 13 of the Preamble, which recognizes "the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries".

In a period when some international financial bodies were strongly advocating "structural adjustment", with its well documented consequences for social and economic rights, the incongruity of preparing a treaty which so generously defines the rights of children was apparent to developing nations. The Convention's emphasis on international co-operation was one of the factors which allowed this paradox to be overcome. The unprecedented number of ratifications by African, Asian and Latin American States evidences their commitment to the rights of children, and faith that somehow—in part through the solidarity of the international community—these contradictions can be overcome.

The theme of international co-operation is also implicit in Part II of the Convention, which defines the functions of the Committee on the Rights of the Child. Traditionally, the term "monitoring" is used to describe the main function of such a Committee. Such "treaty-monitoring bodies" study and evaluate compliance of each State party with the instrument in question, exercising in the process the degree of political and moral pressure the Committee members consider appropriate. Some Committees also have competence to receive complaints.

* Jurist, Defence for Children International (DCI), Geneva.

The Committee on the Rights of the Child will have an additional function—assuming it chooses to develop it. Article 45 (*b*) of the Convention provides that the Committee on the Rights of the Child may transmit to "specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any . . ." The previous paragraph of article 45 provides that UNICEF and other agencies may be represented at meetings of the Committee and, at the invitation of the Committee, may provide it with expert advice as well as reports on the implementation of the Convention. In effect, these provisions provide the legal basis for a system for promoting implementation of the Convention which goes far beyond mere monitoring, and which could make a valuable contribution to stimulating and co-ordinating bilateral and multilateral co-operation in favour of the rights of children.

UNICEF, as the only United Nations body devoted especially and exclusively to children, as well as the only United Nations agency expressly mentioned in the Convention, has a special responsibility to ensure that this innovative advance in the international protection of human rights does not remain a dead letter or, worse still, become perverted into an empty bureaucratic exercise.

UNICEF and the rights of the child

The Convention on the Rights of the Child was not a UNICEF initiative. UNICEF did not become actively involved until 1986 when its Executive Board requested UNICEF to support the preparation of this new instrument.[1] Since then, involvement in the drafting process and the campaign for ratification has led to a growing debate within UNICEF as to what the Convention would mean for it, once it comes into force.

Two points should be beyond dispute: responsibility for monitoring compliance with the Convention by States parties lies with the Committee on the Rights of the Child, not with UNICEF, and the Convention does not in and of itself alter the mandate of UNICEF. Yet within these parameters there is still a wide range of options concerning the role or roles UNICEF could adopt regarding the Convention. The real question is not whether UNICEF should usurp the Committee's responsibilities with regard to monitoring compliance with the Convention, but how far it should assume responsibility for promoting implementation of the Convention in States parties, and how it might integrate the standards set forth in the Convention into activities it carries out around the world.

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[1] E/ICEF/1986/CRP.37, 30 April 1986.

The question of what responsibility UNICEF should assume in promoting implementation is closely linked to its role under article 45 (*b*) of the Convention with regard to technical advice or assistance. What requests will the Committee forward to UNICEF? How will UNICEF respond? How can such requests be integrated into the relatively decentralized UNICEF planning process? If UNICEF is prepared to respond to requests channelled to it through the Committee on the Rights of the Child, will it also respond to similar requests made directly by a Government to the UNICEF national office? How will UNICEF respond if the Committee forwards to it the report of a State party which the Committee considers "indicates a need" for advice or assistance which has not been requested by the State party? If a national UNICEF office considers that a State party needs to take action on a certain problem, but the political will is lacking, will it attempt to use the Committee's review of the State's report to gain leverage in its negotiations with the Government? These are just a few of the questions raised by the references to UNICEF in article 45 of the Convention.

The real significance of the question of defining UNICEF's responsibility with regard to the Convention, however, comes from its potential to promote effective implementation of the rights of the child on the national level. UNICEF has offices in nearly 100 countries around the world, and National Committees in some 30 more. In this UNICEF is similar to agencies or organizations like the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organisation or the International Committee of the Red Cross, organizations which, like UNICEF, are devoted to caring for the rights of one, especially vulnerable, part of humanity. With the coming into force of the Convention on the Rights of the Child, there is a new common factor: the existence of an international treaty defining in a comprehensive fashion the rights of that population. The experience of other bodies shows beyond the shadow of a doubt that efforts to promote recognition and respect for the rights of an especially vulnerable group by a specialized body having such a network can be vastly more effective than the efforts of the United Nations to promote human rights in general. This is a compelling reason for reflecting upon the role UNICEF should assume with regard to the rights enshrined in this new Convention, and how that role might be implemented.

One fundamental question underlies all of those mentioned above: Does UNICEF have a responsibility to promote the whole range of rights incorporated in the Convention, or only certain of those rights?

The UNICEF mandate

UNICEF, unlike FAO, ILO, WHO and UNESCO, is not one of the United Nations specialized agencies. Consequently, its mandate is not

defined by a constitutive instrument, but is derived from resolutions of the United Nations General Assembly. The UNICEF Executive Board has authority to make policy within parameters defined by the corpus of relevant General Assembly resolutions, and can also forward to the General Assembly proposals which would result in modifications of the mandate. Conversely, the General Assembly may call on the various components of the United Nations system to take action within their respective mandates to address certain issues, in which case the Board may be requested to provide guidance as to the implications of the General Assembly decision for UNICEF policy and programmes. The status of UNICEF thus leads to a mandate which is not inflexible, but can be adapted to meet new needs and concerns.

The mandate of UNICEF, like that of most international bodies, has not been static. UNICEF was hastily established in 1948 to assume the mandate of the United Nations Relief and Rehabilitation Administration, the victim of premature demise due to political manoeuvring within the international community which marked the start of the cold war.[2] The letter "E" in the well-known acronym, which no longer corresponds to the actual name of the organization, betrays the now largely forgotten origins of the "Fund". It was an emergency fund, intended to be phased out after enabling the countries of war-torn Europe to recover their capacity to meet the basic needs of their children.

The first major shift in the mandate came early in the life of UNICEF. While the initial mandate was to help Europe recover from the war, within only a few short years the mandate had shifted from Europe to the South: by 1953 fully 93 per cent of its programme budget was allocated to activities in the developing nations.[3]

Since its creation UNICEF efforts to aid children have stressed health and nutrition. Gradually, its pre-eminent commitment to child health led it to assume commitments in areas seen as linked to effective protection of child health, including community organization, certain economic and social rights of women, family planning, pre-school education and non-formal education for adults. In effect, UNICEF came to be seen, and to see itself, as a special kind of development agency. Within the United Nations system it became one of the main advocates for a certain style of participative, human needs-oriented approach to development.

This does not mean, however, that it has considered its role as limited to the delivery of aid or services. As advocate for this approach to development, it has assumed the role of catalyst and sometimes gadfly

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[2] Maggie Black, *The Children and the Nations*, UNICEF, New York, 1986.

[3] E/ICEF/1986/CRP.33, para. 6. Since its creation UNICEF has had responsibility for UNRRA activities in China as well as Europe.

within the larger international system, encouraging specialized agencies through tactics ranging from joint programmes with WHO and UNESCO to critical studies of the social impact of fiscal policies promoted by bodies such as the International Monetary Fund.[4] At the same time, it has assumed the task of educating public opinion and winning the support of the public for this approach to development, notably through education, information and publicity programmes addressed to both children and adults in the industrialized nations.

"Children in especially difficult circumstances"

A major change in the UNICEF interpretation of its mandate occurred in 1986, with the adoption by the Executive Board of a resolution on "children in especially difficult circumstances".[5] In it the Board expressed concern with "the large and growing number of children in areas of armed conflict and those affected by natural disasters, children in exploitative work situations, street children and children subject to abuse and neglect . . ."

This resolution marked a departure from previous policy in several ways. First, and most importantly, the resolution presumes a commitment to children going far beyond a narrow concern with primary health care, nutrition, sanitation and education. A policy paper concerning implementation of this resolution as well as a contemporaneous resolution on the rights of the child stated this quite clearly in the first "Working Principle" intended to guide the UNICEF response to these resolutions:

> The child must be treated as a whole person with attention to his/her psycho-social and emotional needs as well as physical needs.[6]

Secondly, whereas UNICEF activities had previously focused largely on children under six years of age (and their mothers), the new concern with children in these four circumstances tended to focus greater attention on the problems of older children, including adolescents.

Thirdly, the preparation of a strategy in favour of children in these circumstances quickly led to the realization that they are not limited to developing nations, contributing to a debate which is still going on as to the role of UNICEF in the industrialized nations and the socialist bloc.

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[4] In 1984 UNICEF published *The Impact of the World Recession on Children* (R. Jolly and G. A. Cornia, Pergamon Press, London) and entered into a dialogue with the World Bank and the International Monetary Fund intended to ensure that adjustment policies would take into account the needs of vulnerable sectors of the populations of the countries concerned.

[5] E/ICEF/1986/CRP.33.

[6] CF/PD/PRO-1986-004 (memo from the Director of Programme Division to all field offices stating UNICEF strategy for implementing E/ICEF/1986/CRP.33).

Finally, the resolution, and especially the strategy for implementation, foresaw the need for UNICEF to become involved in a number of activities in which it had little previous experience, including participation in United Nations standard-setting, encouraging ratification of international instruments, promoting law reform on the national level, and the training of police and judges.

If the 1986 plan for the implementation of the UNICEF mandate to protect "children in especially difficult circumstances" were fully operational, it would be a relatively small step to propose UNICEF participation in promoting implementation of the Convention on the Rights of the Child. Unfortunately, such information as is available would seem to indicate that implementation of the 1986 strategy has been uneven.

Programmatic activities in favour of street children, often focusing on the exploitation of their labour, have become widespread in Latin America and Asia, and are spreading in Africa. Major efforts to protect children from the consequences of armed conflict, or to rehabilitate child victims, have been taken in some widely publicized situations, particularly in Africa, but this approach is not being implemented systematically in all countries where armed conflicts exist, or where the consequences of recent conflicts are still felt.[7] Efforts to combat child abuse and neglect, which UNICEF itself estimates to affect 10 per cent of the world's children, have been quite limited thus far.

In so far as participation in international standard-setting is concerned, UNICEF had little direct participation in the drafting of the Convention on the Rights of the Child, but it did sponsor a series of regional, national and international meetings, which made an important contribution to the drafting process. However, UNICEF has taken no active interest in other international standards drafted during this same period, such as those concerning the rights of juveniles deprived of liberty, inter-country adoption, indigenous peoples or mental patients. On the national level, efforts by UNICEF to promote public awareness and ratification have ranged from some which verged on the counter-productive to others which have been truly impressive in their scope and creativity.

In several countries impressive efforts to promote law reform and training of government officials with regard to children's rights have been made, but these examples are still the exception that proves the rule. It is symptomatic of the ambivalent attitude of UNICEF towards these questions that no comprehensive list of activities undertaken by UNICEF national offices to promote ratification of the Convention, or to support law reform for protecting the rights of children, exists.

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[7] Still less is there any evidence of a policy of promoting compliance with international standards regarding the minimum age of recruitment into armed forces.

The short shrift given to the entire question of children in especially difficult circumstances in the "Goals for Children and Development in the 1990s" is further evidence. Of the 33 objectives set for this decade, including eight specific targets concerning nutrition, for example, only one refers to children in especially difficult circumstances, calling piously on all nations to "provide improved protection for children in especially difficult circumstances and tackle the root causes leading to such situations".[8] UNICEF Annual Reports and reports to the Executive Board during the last four years confirm that activities on behalf of children in these four "exceptionally difficult" situations have not yet become an integral part of UNICEF activities throughout the world.

While the low priority given to this area thus far is disappointing, it is important not to overlook the valuable efforts which have been made on the national level in some countries. Unfortunately, many of those experiences are poorly known, even within UNICEF itself. Now that the Convention has entered into force and attention increasingly turns to its implementation, it would be most useful to undertake a comprehensive inventory of these experiences, and to evaluate the progress made in carrying out the strategy adopted in 1986. Such a survey would undoubtedly yield many valuable ideas and experiences of interest to States parties now faced with the task of implementing the rights contained in the Convention, as well as facilitate UNICEF planning of its own objectives and strategies in this regard.

All the rights of the child?

The UNICEF mandate is a composite one, defined, as we have seen, by the aggregate of a number of United Nations General Assembly resolutions as interpreted by the Executive Board. It is a mandate which is inherently flexible, as well as being easy to amend. Yet the underlying issue is not a narrow legal one, but whether or not UNICEF should involve itself in issues in which it has not thus far acquired a great deal of expertise, and whether by doing so it would jeopardize its effectiveness in its traditional areas of concern.

Although any attempt to classify rights inevitably results in simplification of their interrelationship, it is nevertheless instructive to compare the mandate of UNICEF with the provisions of the Convention. The UNICEF traditional mandate, which it sums up with the words "survival and development" may be presumed to correspond to article 6, as well as

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[8] *World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*, appendix, p. 23, adopted at the World Summit for Children, United Nations, New York, 30 September 1990.

articles 23, 24 and 27, concerning the right to health and health services, the rights of handicapped children and the right to an adequate standard of living. The UNICEF mandate to protect children in "especially difficult circumstances" presumably gives it a special interest in promoting implementation of articles 19, 20, 32, 38 and 39, concerning child abuse and neglect, abandoned children, exploitation of child labour, participation of children in armed conflicts and the rehabilitation of children who have been the victims of such practices. Other articles of the Convention are very closely linked to, or overlap with, parts of the UNICEF mandate. The link between articles of the Convention concerning parental responsibility, separation of children from their parents and adoption (articles 9, 18 and 21) and questions of child abuse and neglect, for example, is self-evident. Articles 35 and 36, concerning trafficking, sale and other forms of exploitation of children, overlaps with UNICEF concerns with the protection of children in especially difficult circumstances. Article 25, concerning institutional treatment of physically or mentally ill children, and article 31, concerning the right to rest and leisure, surely have a bearing on the child's right to health and development.

Other specialized United Nations bodies have a special mandate or competence covering other rights recognized in the Convention, which may diminish the need for active UNICEF involvement. Examples would include the UNHCR special competence and responsibility with regard to refugee children, UNESCO responsibility for educational and cultural rights, ILO expertise and responsibility for child labour and social security and the United Nations Centre for Social and Humanitarian Affairs with regard to drug abuse and juvenile justice.

This attempt to identify and allocate responsibility for the various rights contained in the Convention is simplistic, of course, but it does highlight one problem: the area which might be considered outside the established mandate of UNICEF and the other United Nations bodies is essentially the core of "civil" rights or liberties, such as the right to identity, family unity, to opinion, to expression, thought, association, privacy and access to information. Yet many observers consider the transformation of the child from a passive "object" of measures of protection to an active subject of rights to be one of the most significant contributions of this Convention to the international law of human rights.[9]

What organ of the international community will help and encourage States to recognize and protect these rights, if not UNICEF? The Committee on the Rights of the Child will periodically monitor States'

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[9] D. O'Donnell, "La Convención sobre los Derechos del Niño: Contenido y Estructura", *Infancia* (Bulletin of the Interamerican Children's Institute of the OAS), vol. 36, No. 230 (Montevideo, July 1990).

records in this regard, with the United Nations Centre for Human Rights acting as secretariat of the Committee, but neither the Committee nor the Centre has the permanent presence "on the ground" necessary for ongoing, systematic efforts to promote the rights of children.

More importantly, if UNICEF were to limit itself to promoting only the more traditional social or economic rights of children, what message would this send to Governments and, indeed, to public opinion? Is there not a risk of subtly undermining awareness and recognition of the child as not merely an object of planning and delivery systems, but as a person having rights which must be respected? In effect, commitment to "treatment of the child as a whole person" requires recognition of responsibility for all the rights of the child, for rights are ultimately little more than a way of defining the "psycho-social and emotional"—and one is tempted to add "spiritual"—needs of the person.

Acceptance of responsibility for all the rights of the child, and for all children, would undoubtedly represent a challenge to UNICEF. It would have implications for staffing, training, procedures and structures. It need not, however, jeopardize its effectiveness. It does not require a revolution, nor headlong rush into conflict with Governments. It requires evolution—hopefully rapid evolution—and a relatively modest expansion of the activities proposed a few years ago with regard to "children in especially difficult circumstances."

Recognition of UNICEF responsibility for promoting all the rights of the child does not preclude prioritizing objectives, nor exercising discretion as to when political conditions allow effective action on specific issues, in particular on the national level. To the contrary, strategic considerations such as these form part and parcel of the approach to human rights employed by all intergovernmental agencies, especially those which are operational in the field and have permanent direct relationships with Government. However, it is necessary to take care that inherently valid considerations like priorities and sensitivity to political implications do not become a pretext for avoiding responsibilities.

A brief glance at selected aspects of the experience of some other agencies and organizations may help stimulate new thinking as to how UNICEF might take up this challenge while minimizing the risk to established programmes and activities.

A strategy for promoting implementation of the Convention

Specialized international bodies like UNHCR, the International Labour Organisation or the International Committee of the Red Cross have a simple, three-part strategy for promoting implementation of human rights within their particular sphere of competence.

First, they promote ratification of the pertinent international instrument. This is done largely through direct contacts between the national and/or regional representative and the national authorities, primarily in the executive branch but also in the Parliament. It is a constant process: each time a new Government arrives, contacts are made with the head of State or at the ministerial level to broach the issue. Similarly, it is raised by each new head of national or regional office soon after he or she assumes his functions. Parallel, supporting efforts are made at a high level at headquarters. When there are indications that the Government is prepared to consider ratification, these efforts are intensified. When a treaty has been ratified with reservations, the same procedure is followed in order to promote their withdrawal.

Secondly, once a treaty has been ratified, the emphasis shifts to ensuring compatibility of national legislation with the international obligations. This requires the participation of legal staff familiar with the international standards and appropriate ways of incorporating them into national law, taking into account the particularities of each legal system. This technical input usually comes from a regional office or headquarters. There are often intensive contacts between the organization's legal staff and legal draftsmen of relevant ministries, with repeated exchanges of draft texts and proposed amendments, proposals and counter-proposals. Depending on the nature of the Government and prevailing political circumstances, there may also be contacts with the national legislature, either the leadership of political parties or the relevant parliamentary committees. Care is taken to seek the broadest possible political consensus in favour of the organization's objectives.

Thirdly, the international body usually aids the Government in training officials directly responsible for implementing the rights in question. UNHCR, for example, may provide training concerning proper treatment of refugees and asylum-seekers to immigration and labour officials; the International Committee of the Red Cross co-operates with Governments in providing training of military and civil defence officials. Direct training of officials is supplemented by support for the creation of permanent educational or training programmes within the country itself, e.g. by organizing seminars on humanitarian law, refugee law, or international labour standards for university professors or by support for research or the publication of training manuals.

In addition to these activities, which are "promotional" in the technical sense of the word, specialized bodies also seek to ensure compliance with international standards when specific instances of non-compliance arise. In other words, they strive to defend as well as to promote the rights of the specially vulnerable groups within their mandate, within the limited means available to them.

Defending rights diplomatically

Human rights activists are often mystified by the absence of formal complaints procedures for examining violations of international standards concerning refugees or international humanitarian law. However, the lack of such procedures does not mean that the international community makes no effort to enforce compliance with those standards. Both UNHCR and the ICRC contact national authorities directly in such cases, urging them to comply with their obligations under international law. In UNHCR practice, such approaches are invariably confidential, while the ICRC makes information on such matters public in grave cases as a last resort. In the practice of both organizations the level at which the contact occurs varies with the gravity of the situation in question, ranging from the local police or military authority to the head of State.

The practice of the ICRC in this regard has been explained as follows.

During the missions of its delegates, the ICRC remains in permanent contact with the authorities. It therefore goes without saying that it will notify those authorities of any acts or omissions that in its opinion appear to be contrary to international humanitarian law. Such notifications, depending on the importance of their contents, may be made at various levels and may take various forms; they may range from an oral remark made by a delegate to the director of a division to a detailed report by the President of the ICRC to the Government concerned.[10]

The practice of the UNHCR, in cases of unlawful imprisonment or refoulement of a refugee or asylum-seeker, non-registration of birth or denial of access to education to refugee children, for example, is not dissimilar.

The confidential nature of procedures such as these should not lead us to overlook them, or underestimate their effectiveness. Indeed, although there is a certain satisfaction in seeing competent international forums adopt public decisions confirming and repudiating specific cases or situations in which human rights have been violated, given the lack of effective methods for enforcing compliance with such decisions, it would be rash to assert that informal, confidential procedures such as these are necessarily less effective than formal complaints procedures in "enforcing" international standards.

The approach of ILO is somewhat different, because there are established procedures within the organization for formal examination of complaints. Nevertheless, beginning in 1968 the organization has also

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[10] "Action by the ICRC in the event of breaches of International Humanitarian Law", *International Review of the ICRC* (March-April, 1981).

developed a flexible procedure called "direct contacts", which has been described as follows:

> It involves a visit by a representative of the ILO Director-General to the country concerned, with the Government's consent, to examine and seek solutions to problems affecting observance of ratified conventions or compliance with other obligations . . . Originally designed to help find solutions to complex or controversial issues, direct contacts have in practice often constituted a form of technical assistance. This occurs when the Government recognizes the existence of a problem, but wishes to have an advice as to the means of overcoming them (for example, in the drafting of the requisite legislative changes) . . .

Interestingly, the direct contacts procedure was created to complement the work of treaty-monitoring bodies because it was felt that in certain cases "more direct dialogue" with the Government would help overcome problems identified by the competent ILO committee in reviewing compliance with the treaty in question.[11] In effect, the role of the expert is to aid the Government in complying with the recommendations of the committee: "The representative in no way takes the place of the Committee of Experts. The results of his mission are communicated to the Committee, for it to evaluate the measures taken or additional information supplied."[11] While the procedures of the Committee on the Rights of the Child are entirely non-adversarial, it would seem likely that need for similar missions to help complement the work of the Committee will arise, and the experience of ILO might be taken into account by other bodies likely to be called upon by the Committee to provide "technical advice or assistance" to States parties.

In developing countries the assistance in implementing the obligations under the pertinent international instruments provided by international agencies or organizations often goes far beyond provision of the training mentioned above and may include financial aid in setting up the necessary administrative infrastructure, and financial or material assistance in meeting the basic needs of beneficiaries like refugees, prisoners of war, or persons receiving vocational training.

Tensions between the delivery of services or emergency assistance to vulnerable groups and advocating compliance their rights inevitably arise. Each agency or organization has developed its own way of overcoming them when they do, on a case-by-case basis. However, material assistance is not considered an end in and of itself, but rather as part of a larger goal—the protection of the rights of refugees, of victims or armed conflicts or, in this instance, of children—pursued by means of comprehensive strategy.

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[11] K. Samson (former ILO Co-ordinator of Human Rights Questions), "Assistance in the field of human rights—the experience of the ILO", *UN Assistance for Human Rights*, Rädda Barnen and the International Commission of Jurists, Stockholm, 1988, p. 57; see also G. von Potobsky, "On-the-spot visits: an important cog in the ILO supervisory machinery", *International Labour Review*, vol. 120, No. 5 (September-October 1981), pp. 585-587.

Unique potential of UNICEF

In some ways the working methods evolved by UNICEF over the years would seem to lend themselves admirably to implementation of a broader strategy for promoting the rights of the child.

In each country where UNICEF supports activities there is an agreement between the organization and the Government defining the objectives and modalities of UNICEF activities. The 1990 World Summit for Children has identified UNICEF with the rights of the child in the minds of Governments. Building on this favourable climate, UNICEF could begin incorporating a reference to promotion of the rights of the child into such agreements, clarifying the basis for future initiatives in such countries.

UNICEF has long recognized that there are limits to what can be achieved by working directly with official agencies. Consequently, considerable emphasis has been given over the years to working directly with local communities through community-based organizations and NGOs in what UNICEF calls "advocacy and social mobilization". The wealth of expertise and contacts acquired through such advocacy and social mobilization efforts over the years are invaluable in facilitating community involvement in the wide range of activities required to achieve effective recognition and protection of the full range of rights recognized in the Convention.

The "country situation analysis" constitutes a key tool in defining UNICEF objectives and planning activities on the national level, in particular with regard to easily quantifiable factors which are central to UNICEF traditional concern with child survival. These reports could well be adapted to cover the entire range of children's rights, even though this would require a more flexible approach incorporating non-quantifiable as well as quantifiable data. It would be useful to include some information on pertinent legal developments, for example. The preparation of such comprehensive country situation analysis would help orient the planning of activities on the national level. In addition, it would help in efforts to monitor trends and developments concerning implementation of the Convention on the Rights of the Child around the world, and in particular would enable UNICEF to make a valuable contribution to the work of the Committee on the Rights of the Child.

UNICEF does not monopolize efforts by the international community on behalf of children, but rather sees its role as stimulating joint or co-ordinated efforts by all concerned agencies.[12] On the national level, it tends to co-operate closely not only with the relevant governmental

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[12] An overview of UNICEF policies, organizations and working methods (E/ICEF/670/Rev.3, paras. 89-91), 22 August 1984.

agencies, community organizations and national NGOs, but also with a variety of other United Nations agencies, bilateral aid organizations and international NGOs. Internationally, UNICEF participates in inter-agency task forces with organizations like FAO, ILO, UNDP, UNESCO, the World Bank, WFP, WHO and others in order to co-ordinate policy on questions such as child labour, nutrition, health and education.

This is another aspect of the UNICEF approach, which would be invaluable in promoting implementation of the Convention on the Rights of the Child. One of the innovative aspects of this Convention, as indicated above, is the emphasis it places on international co-operation, in operational as well as conceptual terms. UNICEF commitment to inter-agency co-operation, together with its special concern with the rights of the child, would enable it to play a lead role in co-ordinating the participation or response to such requests for assistance. It has been suggested that it would be useful to organize informal preliminary consultations between governments and institutions or organizations which could provide the necessary assistance.[13] In view of its attachment to inter-institutional co-operation and its particular interest in the rights of the child, UNICEF could play a leading role in co-ordinating the assistance which has been provided or the responses to requests for assistance.

While some UNICEF established working methods would stand it in good stead in implementing a broader strategy for promoting the rights of the child—and indeed make a valuable contribution to international strategies for the protection of human rights in general—some aspects of the experience of other specialized international bodies whose activities are oriented towards promoting compliance with international standards may well have relevance to the challenge faced by UNICEF at this historic juncture.

The role of national committees

The scope and objectives of co-operation between UNICEF and the National Committees for UNICEF are receiving more and more attention in UNICEF circles. This question is linked to the broader questions of whether UNICEF should work on behalf of children throughout the entire world and, of course, to that of the UNICEF role regarding the Convention on the Rights of the Child.

The UNICEF tendency to see itself as a special kind of development organization, rather than an organization devoted to the protection of

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[13] First *Ad Hoc* Inter-Agency Meeting on the Implementation of the Convention on the Rights of the Child, Geneva, 14-15 January 1991. (Declaration of the WHO Representative.)

children which gives high priority to the struggle for child survival in those countries where there is the greatest need, has led to a strong demarcation between two types of presence: developing countries have offices which carry out projects benefiting children, while other countries have UNICEF national committees whose main function consists of raising funds to support UNICEF programmes in developing countries. National committees also have a public education function, but this is focused almost entirely on developmental issues.

The implementation strategy for UNICEF action on behalf of "children in especially difficult circumstances" fueled discussion on the role of national committees. As indicated above, reflection on appropriate strategies to protect children in these situations led to recognition that the developing countries have no monopoly on these violations of the rights of the child. The implementation strategy notes, for example, that perhaps 10 per cent of the world's children suffer abuse or neglect at the hands of their family, other caretakers and institutions supposedly dedicated to their protection and assistance. It is a universal problem, common to both industrialized and developing countries.[14]

How, then, could UNICEF begin to address these issues in countries where it has no office? The 1986 strategy, while it did not suggest that national committees should take action on "children in especially difficult circumstances within their own country, did call on UNICEF national committees in industrialized countries "to undertake advocacy on behalf of child's rights, ratification of existing conventions and the completion of the draft Convention.[15] This is one element of the strategy which was actually carried out. Many national committees became actively involved in the campaign for adoption and ratification of the Convention, and some continue to promote ratification in countries which have not yet become States parties. As ratification progresses, the question which arises is whether they have exhausted their potential to contribute to this process, or whether they might play a useful role in the Convention.

The rapid political changes which occurred in many countries of Eastern and Central Europe in 1990 have conferred some urgency on this question. In several countries this political change gave rise to economic dislocation of startling dimensions; sometimes it revealed social problems of unanticipated gravity affecting children. In many such countries it led to questioning of much of the established legal order, including the legislation on adoption, juvenile justice and other issues affecting children. In confronting this emergency, reminiscent in some ways of that which had brought UNICEF into being just over four decades ago, Government and UNICEF national committees have turned towards UNICEF for help. To

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[14] See note 6 *supra*, *op. cit.*, p. 10.

[15] *Ibid.*, p. 12.

what extent could national committees assume a more active role in implementing UNICEF strategies in countries where UNICEF has no other permanent presence?

The relationship between the International Committee of the Red Cross and the National Red Cross and Red Crescent Societies bears comparison to that between UNICEF and its national committees. The national societies, together with the League of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, constitute the Red Cross and Red Crescent movement. While each of the three components of the movement has a distinct role and there are clearly functions where the role of the International Committee is predominant—the national societies are active partners in implementing the goals of awareness and training in international humanitarian law, but also promoting compliance and implementation through contacts with the national authorities.

The ICRC "Strategy for the Development of National Societies in the Eighties" called on national societies to support "approaches made by the ICRC to government authorities to encourage the adoption in times of peace of legislative and practical measures" aimed at facilitating the application of international humanitarian law.[16] Their role in promoting legislative reform was reinforced by a resolution adopted by the International Conference of the Red Cross in 1986, which "invites National Societies to assist and co-operate with their own Governments in fulfilling their obligations" to "adopt or supplement the relevant national legislation" required for compliance with international humanitarian law.[17] Subsequently, the ICRC addressed a memorandum to National Societies outlining the role they could play in promoting legislative reform for co-ordinating this area, that they encourage their respective Government to set up interministerial Committees for reviewing the compatibility of national legislation with international obligations, that they ask to be represented on such committees and that they inform the ICRC in advance of any changes which might be proposed.[18]

While UNICEF clearly must develop in its own way, in response to its own historical needs, the experience of the Red Cross and Red Crescent movement suggests that it may well be possible for the national committees to assume a broader, more active role, thus making a greater contribution to realizing the goals of UNICEF. Since programmes to ensure child survival in developing countries will remain first priority for UNICEF for

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[16] *Strategy for the Development of National Societies in the Eighties: ICRC Contributions to the Development of National Societies*, para. 3.2, ICRC, June 1981.

[17] Resolution V of the 25th International Conference of the Red Cross, ICRC, Geneva, 1986.

[18] *Interim report on implementation of Resolution V*, ICRC, Geneva, 15 August 1989.

the foreseeable future, as they should, aiding national committees to assume a more active role in promoting the rights of the child in other countries might help broaden the scope of UNICEF activities on behalf of children without reallocating resources away from development activities.

Taking rights seriously

One administrative or structural feature common to other organizations is the existence of a focal point of staff within the organization trained in interpreting and implementing international standards. The Convention is not just a convenient tool for popularizing the notion of children's rights — it is also a binding legal instrument. While there can be no doubt as to the importance of an inter-disciplinary approach to the promotion of human rights, neither can there be any doubt about the need for legal input into such efforts. Taking the Convention seriously means having legal staff, with a clearly defined role and responsibilities.

The experience of other organizations may help illustrate this point. Just over 10 years ago the International Labour Organisation began to appoint regional advisers on international labour standards, principally in order to have the capacity to respond effectively to a growing number of requests from Governments for technical assistance in ensuring compatibility of the national legislation with their obligations under international instruments.[19] In addition, they help ensure that assistance provided to developing countries through ILO technical co-operation programmes is compatible with the relevant human rights standards.

UNHCR also has a specialized unit responsible for promoting compliance with international standards concerning refugees, the Division of International Protection. The Division organizes seminars and conferences concerning refugee law, provides technical advice to regional and national offices involved in negotiations with Governments concerning legislation throughout the world, and supervises and co-ordinates the response of UNHCR offices to specific cases and situations of possible infringement of the rights of refugees as they arise. Like ILO, the staff of this Division includes regional legal advisers. Most of the regional offices, and some of the larger national offices, also have specialized "protection" staff.

An attempt to shift the "protection" function to programme staff occurred within UNHCR in 1986, as part of a restructuring exercise which gave the regional bureaux "primary responsibility" for all operational aspects of UNHCR protection, reassigned the legal officers who had worked within such bureaux and renamed the Protection Division the

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[19] Samson, *op. cit.*

"Division of Refugee Law and Doctrine".[20] This experience proved quite unsatisfactory, not the least to the States which form the UNHCR Executive Committee, and in 1990 the original name and role of the Division of International Protection were restored.

The International Committee of the Red Cross has a legal Division whose functions, not like those of the UNHCR Protection Division, include participation in training of national authorities and guidance to field offices in matters concerning legislation and representations concerning specific cases or situations. Legal staff are also attached to some of the larger field offices.

In UNICEF, matters concerning the Convention on the Rights of the Child thus far have been assigned to the Division of External Relations, whose main functions are fund-raising and liaison with the UNICEF national committees, United Nations agencies and NGOs. Entry into force of the Convention has already begun to provoke requests for advice as to legislative reform, to which UNICEF is unprepared to respond. In addition, some field offices have begun to get involved in promoting law reform linked to implementation of the Convention, and making confidential representations to national authorities in certain cases involving "children in especially difficult circumstances". It would seem likely that, like other organizations, UNICEF will discover the need for a distinct unit with specialized staff having responsibility for centralizing information about such activities carried out by field offices, contributing to in-house training and policy formation in matters concerning the rights of children, providing input into the planning of external educational activities, and responding or at least co-ordinating the response to requests from Governments for assistance in legal matters. In addition, such a unit could co-ordinate UNICEF co-operation with the body responsible for monitoring implementation with the Convention, the Committee on the Rights of the Child, as well as with the similar departments of other specialized agencies with which it will co-operate in promoting implementation of the Convention on the national level.

These are tasks which are well beyond the reach of the Committee on the Rights of the Child and its secretariat, and which can only be carried out—in close co-operation with the former and with other specialized agencies—by a body like UNICEF, specialized in the protection of children and having a presence throughout the world.

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[20] Report of the *Ad Hoc* Review Group on the Role and Structure of UNHCR, Geneva, March 1990.

The Convention on the Rights of the Child: norms for protection and an instrument of co-operation for the survival, development and well-being of the child

*Fatma-Zohra Ksentini**

Mankind owes to the child the best that it has to give
EXTRACT FROM THE DECLARATION OF THE RIGHTS OF THE CHILD

The children of the world are innocent, vulnerable and dependent . . . Their future should be shaped in harmony and co-operation
EXTRACT FROM THE WORLD DECLARATION ON THE SURVIVAL, PROTECTION AND DEVELOPMENT OF CHILDREN

Introduction

The Convention on the Rights of the Child, which was adopted by the General Assembly on 20 November 1989, came into force on 2 September 1990, thereby providing the international community with a legal instrument that was binding on States parties, and contained a set of norms designed to protect and safeguard our future generations.

The Convention revives the prospect of a future that reflects the objectives of the Charter of the United Nations, whose Preamble begins by stating the determination of the peoples of the United Nations to "save succeeding generations"... and "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . ".

The Convention on the Rights of the Child is one of those rare legal texts that revert to that futuristic vision and reaffirm the link established by the Charter between future generations and human rights.

* Expert on the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The speed with which the Convention came into force leads us to forget that some 10 years' negotiations were necessary to bring this major international instrument into being.

Those 10 years will not have been in vain, as the international community will have successfully incorporated into a single text a set of norms bearing on the child and based on an integrated approach which deliberately adopts a dynamic and reconciliatory view of human rights; dynamic because the Convention is resolutely oriented towards the future, towards action and co-operation, and reconciliatory, because the Convention takes its inspiration from the concept of the indivisibility and interdependence of human rights, both in their individual and collective aspects, and in their domestic and international dimensions.

Those 10 years will also have been beneficial as the negotiations will have encouraged debate and made it possible to keep the question of the protection of children on the agendas of various international bodies, as well as in the United Nations General Assembly itself. This has led to the development of a universal awareness of the problems of children, itself a prelude to the mobilization of the efforts of the international community to resolve them.

Moreover, those 10 years will have helped to initiate a structured dialogue on controversial topics. The political stakes and cultural and regional factors have been assessed by the yardstick of the higher interest of children around which the consensus was formed. As a result, the General Assembly formally adopted the Convention on the Rights of the Child without a vote, and it was signed and ratified with unprecedented speed.

It could hardly have been otherwise when one and a half billion children will be born between now and the year 2000, and when each day, as is stated in the World Declaration on the Survival, Protection and Development of Children, "millions of children suffer from the scourges of poverty and economic crisis—from hunger and homelessness, from epidemics and illiteracy, from degradation of the environment. They suffer from the grave effects of the problems of external indebtedness and also from the lack of sustained and sustainable growth in many countries, particularly the least developed ones."

The Convention is important on more than one score.

It is important as it establishes standards on the basis of an integrated approach that allows human rights to attain their full dimension and restores the full integrity of children;

It is important on account of the challenges faced by millions of developing, vulnerable and dependent human beings. It represents the moral and legal commitment of States to take up those challenges, together with the various components of society, both domestically and internationally.

I. An integrated approach to the rights of the child

The Convention on the Rights of the Child acquired its patents of nobility by capturing the international atttention which, *inter alia*, led to the convening of the World Summit for Children on 30 September 1990, and by becoming part of positive law less than one year after its adoption by the General Assembly. The interest shown in recent years in the question of the rights of the child cannot, however, conceal the fact that the proposal by Poland to draw up a convention on children initially gave rise to debate, if not opposition. Its opportuneness was queried by those who argued that children could not be subjects of international law, while its usefulness was questioned by those who pointed out that there were already 80 texts referring either directly or indirectly to the rights of the child. The advocates of a convention on the rights of the child had to point out that contemporary international law recognizes that individuals may claim the benefits of regulations designed to protect them, without being subjects of international law. They had to demonstrate that children could be specific subjects of law on account of their particular needs, and that they required special protection in view of their vulnerability. A convention reinforcing the norms established in respect of adults is not only useful, but necessary in order to tackle the challenges faced by children (forced labour; exploitation; prostitution; massacres; disappearances; conditions of detention; traffic in children; conscription into the armed forces; etc.).

This reminder was necessary to underscore that the Convention's main merit is that it exists and attempts, in a legally binding global instrument, to update disparate norms in order to deal with the problems of children on the basis of an integrated approach and an open view of the concerns of our time.

A MULTIDIMENSIONAL APPROACH TO MAJOR CHALLENGES

The Convention on the Rights of the Child takes its place in the normative structure of human rights, of which it is an integral part. It consolidates that structure by developing rules tailored to the needs of a vulnerable category of persons, and including them in the prospects for the future held out by the concept of human rights as embodied in the Charter of the United Nations. Moreover, the Convention adopts an approach whereby it is possible to deal with different kinds of problems likely to hamper the multidimensional development of the child.

The Convention attempts to set standards for the present by rehabilitating children and restituting their rights as "human beings". Moreover, it looks to the future by calling on the international community to adopt the necessary measures to protect and guarantee the rights of our future generations.

The sphere of human rights is thus enlarged and its dynamic multiplied tenfold. Orienting human rights towards the future holds out fresh prospects that enhance their remedial value while demonstrating their preventive potential. Reinforced rules for the protection of children help to palliate the risk of situations developing in which the rights of adults are violated. For example, guaranteeing children the effective exercise of their right to education meets one of the requirements for facilitating the implementation of that norm in the future, while preparing individuals, if not fully to enjoy their other rights, such as the right to work, at least to know how to demand and exercise them.

This vision of the future was moreover a leitmotif of the World Summit for Children, which rightly stressed that renewed efforts to protect the life and development of children and to put an end to the worst aspects of poverty would be the most significant long-term investment that man could make in his own economic prosperity and political stability.

The interest shown in recent decades in the problems of children has highlighted the tragic plight of millions of children, particularly in the developing countries.

There is no need to recall the rates of infant mortality and illiteracy, the cases of malnutrition, the number of illnesses with serious physical and mental consequences, the precarious conditions of survival and the lack of development that afflict underprivileged children. However, some of the figures in the UNICEF report, *The State of the World's Children 1990*, are enlightening in this regard:

> On present trends, over 100 million children will die in the 1990s—50 million of them from just three common diseases which can be inexpensively treated or prevented.
>
> . . .
>
> More than a quarter of a million small children [are still] dying every week of easily preventable illness and malnutrition.
>
> In 1988, the mortality rate of children under five was between 250 and 300 per thousand in many developing countries, compared with an average of between 15 and 10 per thousand in the developed countries (7 per thousand in Sweden and Finland).

Poverty deprives children of their right to life and to healthy physical and intellectual development. They suffer from *de facto* discrimination as they are deprived of equal opportunities for development and are unable to fulfil the mental and physical potential with which they were born. In addition, their situation opens the way to a whole series of other rights violations (exploitation of their labour; prostitution; servitude; abandonment; pseudo-adoption; traffic in children; use for unlawful, clandestine and criminal ends, including involvement in the drug trade, etc.).

Moreover, on account of their vulnerability, children are the first to suffer from human rights violations. Disappearances, torture and ill-treatment, imprisonment, deplorable conditions of detention and other factors affect children in three ways: by violating their rights as human beings; by depriving them of their childhood; and above all by jeopardizing their future.

Children are also in the front line of conflicts. Reduced to the status of displaced persons, refugees or stateless persons, they are subjected to the suffering and deprivation that ensues from their status, which will mark them for the rest of their lives, if they survive. Without a homeland, a home or a dwelling, what chance have Palestinian children of exercising their right not to be separated from their parents, to express their views freely in all matters affecting them; not to be subjected to arbitrary or unlawful interference with their privacy, family or home; to preserve their identity, including nationality, name and family relations?

What prospects have children living under apartheid of exercising their civil and economic rights without discrimination and of benefiting from equal opportunities for development?

The Convention on the Rights of the Child attempts to vest responsibility for all aspects of these problems and situations in the international community, by setting out minimum norms for the protection of the life, health, education and identity of the child. It also advocates a series of measures designed to protect children against all forms of exploitation, ill-treatment and discrimination and to safeguard them from the consequences of conflicts. It emphasizes the objective of the survival and harmonious development of children, the particular needs of the developing countries and of children living in difficult circumstances.

However, the Convention has been criticized, on the one hand for having established, in the case of armed conflict, levels of protection allegedly inferior to those stipulated by current humanitarian law, and on the other for not having completely prohibited financial gain in respect of adoption, and lastly for having ignored the situation of child victims of occupation and apartheid.

However, inasmuch as these may be considered shortcomings, they are less the consequence of the deliberate desire of the international community to diminish its capacity to act on behalf of children than the result of its ardent wish to arrive at a text capable of being adopted by consensus on the occasion of the thirtieth anniversary of the Declaration of the Rights of the Child.

Moreover, it should be pointed out that such criticism does not stand up to careful analysis of the Convention's text:

- In the case of armed conflict, article 38 should be taken in conjunction with article 41, which states that "nothing in the present

Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in the law of a State party or international law in force for that State";

- With regard to adoption, the best interests of the child are the paramount consideration. Moreover, the concept of "improper financial gain" is itself taken up in the other provisions of the Convention which prohibit economic exploitation (art. 32), sexual exploitation (art. 34), the abduction of, the sale of or traffic in children (art. 35) and all other forms of exploitation (art. 36);

- The Convention does not deal directly with the situation of children under occupation and *apartheid*. This does not mean that it fails to address such situations. Their consequences are covered by a series of articles (the right of the child to preserve his or her identity, including nationality, name and family relations; respect for the child's cultural identity, language and values; preparation of the child for responsible life in a free society, etc.). Furthermore, the Convention reaffirms a number of international instruments, including the 1966 Covenants which established the right of peoples to self-determination, and the Declaration on the Protection of Women and Children in Emergency and Armed Conflicts (resolution 3318 (XXIX)), a considerable part of which is devoted to children subject to suppression, aggression, colonialism, racism, alien domination and foreign subjugation.

Lastly, the Convention adopts the concept of "children living under especially difficult circumstances", foremost among whom are the victims of occupation and apartheid. Moreover, this concept was taken up and defined by the Plan of Action of the World Summit for Children in the following terms:

> Millions of children around the world live under especially difficult circumstances—as orphans and street children, as refugees or displaced persons, as victims of war and natural and man-made disasters, including such perils as exposure to radiation and dangerous chemicals, as children of migrant workers and other socially disadvantaged groups, as child workers or youth trapped in the bondage of prostitution, sexual abuse and other forms of exploitation, as disabled children and juvenile delinquents and as victims of *apartheid* and foreign occupation. Such children deserve special attention, protection and assistance from their families and communities and as part of national efforts and international co-operation.

A RECONCILIATORY VIEW OF HUMAN RIGHTS

The Convention promotes the thesis of the indivisibility and interdependence of all human rights. In fact, it is one of the few conventions to bring together and reconcile the whole family of human rights.

We are all familiar with the prevailing arguments made during the preparation of the 1966 Covenants in favour of the drafting of two

international instruments, one dealing with civil and political rights and the other with economic, social and cultural rights, thereby maintaining a definite separation between the two categories of rights.

The Convention on the Rights of the Child is proof that these two categories can be dealt with in a single instrument and under the same protection machinery.

The Convention embodies a whole set of rights, extending from the first to the third generation, which States parties are obliged to respect and promote. These States undertake to submit to the Committee on the Rights of the Child reports on any measures taken to give effect to the rights established in the Convention and to indicate any factors and difficulties preventing them from fulfilling their obligations.

Much of the Convention is devoted to civil rights, the content of which has been adjusted to the specific needs of the child (right to a name, nationality, preservation of identity; freedom of opinion for the child capable of judgement; freedom of expression, conscience and religion; freedom of association and peaceful assembly; protection against arbitrary or illegal interference; right to information; prohibition of torture, capital punishment, and life imprisonment; strengthening of legal guarantees, principle of separation of children from adults during detention, etc.).

The Convention also recognizes a set of economic, social and cultural rights of the child, including: survival and development of the child; protection against all forms of exploitation, including economic exploitation; respect for the dignity of the disabled child and provision of special care and rehabilitation services; health; social security; adequate living standards; education; right to rest, leisure and recreational activities; right to cultural and artistic freedom, etc.

However, the Convention does not integrate economic, social and cultural rights completely, in that the implementation of those rights is made subject to the availability of resources. The Convention contains the idea of the progressive implementation of rights. Moreover, most of the economic, social and cultural rights referred to in the Convention do not involve a formal undertaking by States to *recognize* them, guarantee them or protect them; States are simply called on to work for their progressive realization.

For example, States do not recognize the right of the child to health, but the right of the child to the enjoyment of the highest attainable standard of health. They do not guarantee the child right of access to medical treatment and rehabilitation services, but undertake to "strive to ensure" that no child is deprived of his or her right of access to health care services.

Admittedly, the right to education is recognized, but it is to be achieved only progressively, with the only clearly stated aim being to make primary education compulsory and free.

On the question of child labour, the provisions of the Convention, and in particular article 32, establish only the general principle of protection of the child against economic exploitation and does not impose any rules for a minimum working age and conditions of employment, which remain the preserve of national law.

What is more, article 4, under which States undertake to take all legislative, administrative and other measures for the implementation of the rights recognized in the Convention, provides, with regard to economic, social and cultural rights, that such measures shall be taken "to the maximum extent of their available resources".

This article appears both superfluous and dangerous: superfluous in that there was no need to provide a legal basis for arguments that, in any event, States are at liberty to advance in order to justify a lack of progress in the implementation of economic rights; dangerous in that it suggests that the limitation of available resources could be invoked to justify the lack of any measures, including *legislative* measures. A distinction should have been made between the obligation of formal recognition of these rights—the rejection or denial of which cannot be justified by limitation of available resources—and the undertaking to work for the progressive achievement of those rights. A right should be recognized even if there are difficulties or obstacles in the way of its effective implementation.

Fortunately, the Convention points out that efforts at the national level must be supported whenever it is deemed necessary by sustained and multiform international co-operation.

II. Multiform means of implementation for joint action

The Convention on the Rights of the Child is not merely a catalogue of the rights to which the child is entitled. Established rights are necessarily accompanied by duties to be performed and objectives to be achieved by States, the various sectors of society and the international community as a whole. The tone is set by General Assembly resolution 44/25 of 20 November 1989, in which the Convention is adopted. In that resolution, the General Assembly:

- Reaffirms that children's rights require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security;

- Expresses its profound concern that the situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability;

• And states its conviction that urgent and effective national and international action is called for.

It is a question therefore not simply of announcing and recognizing a set of formal rights, but at the same time of launching effective *priority* action to ensure better conditions of life and well-being for children.

The Convention sets out areas for multiform action and various approaches for achieving these objectives.

FIELDS OF ACTION AND POTENTIAL PARTICIPANTS

Action will involve all sectors able to assist in the realization of the rights of the child and covering areas associated with the family, social, economic and cultural life of the child. The rights of the child are actually seen as a harmonious whole which takes account of the child's complete environment, with special emphasis on the parent-child unit, which enjoys special protection.

Although the main obligations lie with States, whose primary duty is to observe the rights set forth and to guarantee them to all children under their jurisdiction, nevertheless, all components of society, within their own spheres, have a significant role to play. Moreover, bilateral and multilateral co-operation and international assistance are required whenever it is felt necessary.

The general obligation of the State is to develop legislation consistent with the principles and norms set out in the Convention, and to take adequate measures for the implementation of the rights established.

These measures differ depending on the rights in question and the areas covered.

• The State may have an obligation to act: registration of children, protection against all forms of exploitation, ill-treatment, etc.

• In other cases, it is obligated to observe and/or ensure observance of the rights of the child and of the parents: respect for the identity of the child, its freedom of religion, expression and association, appropriate assistance to parents responsible for raising the child, protection against arbitrary interference in the private life of the child, etc.

• The State may be called upon to alleviate deficiencies or inadequacies in the family environment: special State protection and aid for children deprived of a family environment or who in their own interests cannot be allowed to remain in that environment, monitoring of adoption of procedures, etc.

Some fields appear to be singled out by the Convention for specific bilateral and/or multilateral co-operation measures.

In its preamble, the Convention recognizes from the outset "the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries".

The areas which lend themselves to co-operation are many:

- The right of the child to preserve its identity, including its nationality, its name and its family relations: research into the interests of the family, judicial assistance, elimination of disappearances, etc.
- Right of the child separated from its parents to maintain personal relations and direct contact with them on a regular basis: organization of cross-frontier visits in the case of children of couples living in different countries.
- Control of the illicit transfer and non-return of children abroad: the Convention calls on States parties to promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.
- The right of the child to information of all kinds. Under the Convention, States are to encourage international co-operation in the production, exchange and dissemination of information and material from a diversity of cultural, national and international sources.
- Inter-country adoption: the Convention calls for the conclusion of bilateral or multilateral arrangements or agreements to ensure that States guarantee the proper procedures are followed.
- To ensure observance of the rights of the refugee child, States parties must co-operate with United Nations and other competent organizations to protect and assist such children and contribute to the reunification of families.
- With regard to disabled children, States parties are to promote the exchange of appropriate information to help developing countries in particular to improve their capacity to respond to the needs of the disabled.
- In the area of health, States parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in article 24. The Convention adds that, in this regard, particular account shall be taken of the needs of developing countries.
- In the area of education, States parties undertake to promote and encourage international co-operation, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In that regard, also, account is to be taken of the needs of developing countries.
- International, bilateral and multilateral co-operation is also invoked to prevent the abduction of, the sale of or traffic in children.

• States parties also undertake to respect and *ensure respect* for rules of international humanitarian law applicable to children.

These few examples give an idea of the importance attached in the Convention to international co-operation. International co-operation is not a substitute for efforts which must be made at the national level. It is intended to supplement them and, where necessary, to make up for the lack of local resources.

International co-operation is invoked for the implementation of both civil and economic rights, as demonstrated by the role allocated to judicial assistance. The social and economic field, too, offers wide scope for international solidarity.

Indeed, the norms for protection of the child set forth in the Convention entail obligations of solidarity, which are also clearly set forth in the Convention. These obligations are not limited to the provision of financial or material assistance. They also involve the observance, protection and effective implementation of recognized rights. These rights include one of the most fundamental—every child's inherent right to life. Observance of this fundamental right calls for genuine international co-operation for development. How could it be otherwise when 20 children are known to die each minute from the direct or indirect effects of hunger; when diseases which can be treated by low-cost antibiotics kill thousands of children each day (8,000 die of measles, whooping cough and tetanus and 7,000 of pneumonia); when 5 million children die each year of easily and cheaply preventable illnesses? (Figures taken from the above-mentioned UNICEF report.)

Finally, another observation illustrating the difficulties of developing countries was made by Mr. Federico Mayor, Director-General of UNESCO, in an address to the UNICEF Executive Board:

> The past few years have witnessed an unprecedented halt in the growth of basic educational services, a stagnation and deterioration of educational quality.
>
> Economic recession and the growing indebtedness of the South have no doubt had a major part in this educational drama.

UNICEF sources themselves state that "debt and interest payments in 1988 . . . totalled almost $178 billion—three times as much as all the aid received from the industrialized countries".

The Convention does not gloss over these difficulties or evade the question of States' responsibility towards children under their jurisdiction or the responsibility of the international community with regard to the condition and fate of future generations. The stated objectives remain to be put into practice. The Committee on the Rights of the Child could play a decisive role in this regard.

THE CATALYTIC ROLE OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

The Convention established a Committee of 10 experts to examine the progress made by States parties in discharging their obligations under the Convention. The Committee's main task is thus to consider the reports submitted by States parties on the measures adopted to fulfil their obligations under the Convention.

At first sight, the Convention's monitoring machinery may seem extremely malleable as it does not empower the Committee on the Rights of the Child to receive and consider communications from States and individuals concerning alleged violations of any of the rights proclaimed in the Convention.

This complaints procedure is nevertheless widely used. Most of the committees on human rights (Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee against Torture) enjoy such authority, albeit on a discretionary basis.

In the case of the Convention on the Rights of the Child, it would have been difficult to win acceptance of the idea that a child could be capable of applying to an international body, considering the reluctance that had to be overcome in gaining acceptance of the idea that the child could be the subject of rules ensuring his protection. The argument could have been made, however, that under the current complaints procedure, the author of a communication is not necessarily the alleged victim, but may be a person authorized to act on behalf of the victim. The Convention could also have provided for consideration of complaints by States, on an optional and reciprocal basis.

This gap has been partly filled by the role assigned to the specialized agencies, UNICEF and other United Nations organs, which are entitled to be represented during the Committee's consideration of the implementation of such provisions of the Convention as fall within the scope of their mandate. The Committee may also invite these organizations and any other competent bodies to provide expert advice in the areas falling within the scope of their respective mandates.

The words "other competent bodies" suggest a variety of possible information sources. The non-governmental organizations, for example, citing the *travaux préparatoires* for the Convention, are of the view that the term includes all NGOs in consultative status with ECOSOC. The practice developed by the Committee will be decisive in this respect.

Another important factor is the Committee's role in promoting and encouraging international co-operation in the area covered by the Convention.

As has already been pointed out, the Committee may invite competent bodies to provide expert advice. It may also transmit to such bodies any reports from States parties containing a request or indicating a need for technical advice or assistance.

It is to be hoped that the Committee will find ways and means of lending impetus to this type of action, so as to play its role of aid catalyst to the full, thus demonstrating that the effective realization of human rights is ultimately the result of healthy co-operation and active international solidarity, rather than of confrontation and condemnation.

Importance of the Convention on the Rights of the Child

*Adam Lopatka**

Introduction

On 20 November 1989, the General Assembly unanimously adopted the Convention on the Rights of the Child. The General Assembly reaffirmed that children's rights required special protection and called for continuous improvement of the situation of children all over the world, as well as their further development and education in conditions of peace and security. The General Assembly expressed its profound concern that the situation of children in many parts of the world remained critical as a result of inadequate social conditions, natural diasters, armed conflicts, exploitation, illiteracy, hunger and disability. The General Assembly was convinced that urgent and effective actions on both the international and national level were necessary.

The General Assembly, convinced of the positive contribution that an international convention on the rights of the child, as a standard-setting accomplishment of the United Nations in the field of human rights, would make to the protection of the rights of children and to ensuring their well-being, adopted the Convention and opened it for signature, ratification and accession. The General Assembly called upon all member States to consider signing and ratifying the Convention or acceding to it as a matter of priority, and expressed hope that it would enter into force in a short time. The call did not remain unnoticed. The Convention entered into force on 2 September 1990, having been ratified by the required number of 20 States. As at 21 January 1991, it had been ratified by 65 States.

The General Assembly invited the United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to intensify their efforts with a view to disseminating information on and promoting understanding of the Convention.

In 1989, on the initiative of Poland, the General Assembly by resolution 44/82 proclaimed 1994 the "International Year of the Family".

* President, Supreme Court.

Its objectives are to stimulate local, national and international actions as part of a sustained long-term effort to increase awareness of family issues among Governments and in the private sector. The International Year of the Family would serve to highlight the importance of the family, to increase the understanding of its functions and problems, to promote knowledge of the economic, social and demographic processes affecting the family and its members, and to focus attention on the rights and responsibilities of all family members. The family constitutes the basic unit of society and therefore requires special attention.

Protection of the family and of the rights of children are questions in which the United Nations has been closely engaged on many levels. As stated by Mr. Jan Martenson, United Nations Under-Secretary for Human Rights, before the General Assembly on 8 November 1989, the Convention on the Rights of the Child "certainly constitutes the most important human rights event of the United Nations this year, and possibly for many years to come". After the adoption of the Convention by the General Assembly, the President of the General Assembly at its forty-fourth session, Joseph N. Garba, concurred in stating: "The rights of the child have now gone from a declaratory statement of purpose into what will become a binding piece of international legislation." And then he added: "The task before us is to give reality to the promises of the Convention by bringing it into force and applying it world-wide."

General characteristics

The Convention on the Rights of the Child (General Assembly resolution 44/25 of 20 November 1989) is not a single, individual and separate instrument of the international community designed to act on behalf of children. But it is the central one, planned to be a long-lasting instrument of United Nations policy aimed at improving the fate of children.

In 1978, Poland submitted the draft Convention on the Rights of the Child to the Commission on Human Rights of the United Nations and asked the Commission to deal with it as a matter of urgency. On 8 March 1978 the Commission decided that work on the Convention was to continue using the submitted text as the point of departure.

The Convention is the fruit of 11 years of persistent negotiations and consultations. It is much richer in its content and more mature than the initial draft of 1978. States from all over the world participated actively in elaborating the Convention. Many new creative ideas were contributed by various sections of the United Nations Secretariat, particularly by the Centre for Human Rights in Geneva and the Centre for Social Development and Humanitarian Affairs in Vienna. Considerable assistance was given by the Office of Legal Affairs of the Secretariat.

The substantive inputs of the United Nations Children's Fund (UNICEF), as well as those of ILO, UNESCO, WHO and the International Committee of the Red Cross should also be stressed. An exceptionally great contribution to the contents of the Convention was also made by the non-governmental organizations which were also most active in winning world public opinion over to the cause of the Convention.

All decisions regarding the draft Convention and its individual provisions are the result of a consensus. "The process of its drafting", said the Secretary-General before the General Assembly on 20 November 1989, "was a model of how our organization can and should strive to achieve common goals". The subject matter of the Convention is extremely sensitive. Its provisions had to reconcile various approaches rooted in different traditions, cultures, religions, stages of economic development, legal systems, and indeed politics.

Despite these differences, the Convention contains a broad consensus on what should be the duties of families, societies, States and of the international community towards children. It is true that sometimes it reflects rather a realistic common denominator than the most ambitious goals. As a whole, however, the Convention not only codifies, but also significantly develops the international norms applicable to children. At the same time, all precautions were taken to avoid any steps that would be interpreted as steps backwards, or as a weakening of the already existing obligations. In its article 41 the Convention formulates the general rule that:

> Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:
>
> (*a*) The law of a State Party; or
>
> (*b*) International law in force for that State.

The sometime-voiced opinion that the Convention does not comply with the current requirements of international law is not substantiated. What is an advantage rather than a weak point of the Convention is its rather frequent use of terms that allow its flexible application according to the specific conditions and possibilities of the separate States. One such term is the term "appropriate".

The Convention is a product of compromises. What they reflect, however, is not weakness but the wisdom and mutual understanding which prevailed during all the work on the Convention.

The Convention contains a full catalogue of the rights of the child as a human being, as recognized today by the international community. It comprises the civil, social, cultural and political rights. Moreover, all these rights are treated in the same way. The Convention aims more often than not at promoting and protecting the rights of a normal child living in

normal conditions. However, it also provides for special protection of the rights of children who live in particularly difficult conditions. Thus, it takes into account the fact that in all countries of the world there are children living in exceptionally difficult conditions, and that such children need special consideration. This concerns children deprived of their family environment; children seeking refugee status; children who are mentally or physically disabled; children belonging to ethnic, religious or linguistic minorities or those of indigenous origin; as well as children living within the range of armed conflicts. The Convention devotes much attention to the protection of the rights of the children who come into conflict with penal law.

The fact that the Convention relates the wealth of the child to that of the family should be regarded as its advantage. In the text of the Convention it is assumed that the family, as a fundamental group of society and a natural environment for the growth and well-being of its members, the children in particular, should receive the necessary protection and assistance so as to be able fully to assume their responsibilities within the community.

The Convention on the Rights of the Child is to be applied to all economically developed and developing countries. Thus, the child's situation calls for improvement in all countries of the world. The Convention has every chance to become a positive stimulus for the development of international co-operation for improving the living conditions of children in all countries, especially in the developing ones.

The best interests of the child

The consistent and constant application of the principle that in all actions concerning children, whether undertaken by the public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration and must also be counted among the achievements of the Convention. The child is a person who has his or her own interests. Those interests should prevail over all the other interests involved, i.e. the interests of the child's parents or parent, siblings, grandparents or other relatives, of the local community, State or its agency or, finally, of any other institution or person.

Obviously, the child's interest is often not, or at least not necessarily, contrary to the interest of parents, State, other persons or organizations. On the contrary, it is in the interest of the State to further the best interests of the child. Similarly, it is in the interest of the parents to promote the interests of their child.

On the other hand, in some circumstances there is a choice between the interest of the child and other interests. In such cases, the Convention always requires that priority should be given to the interests of the child. The Convention takes the fact into account that the interests of the child may be diverse, and that a certain gradation exists. The Convention requires that priority should be given not to any interest of the child but to his or her best interests.

In order to find out what the best interests of the child are in a given case, it may be helpful to learn the child's own opinions, and to attach such importance to them as is reasonable in the light of the nature of the matter, the maturity of the child, and other important circumstances.

Generally, it is clear that the best interest of the child is his or her full and harmonious development in the family environment, in an atmosphere of happiness, love and understanding, free from any form of discrimination or exploitation, with the necessary protection and assistance, so as to enable the child fully to assume his or her responsibilities in the community.

The adoption of the principle that it is necessary always to be guided by the best interests of the child is a most humane and progressive solution which is best suited to the needs of the child's personality. It is the consequence of recognition of the fact that the child is an individual, who has his or her dignity.

In my opinion, national legislation may conform with the requirements of the Convention on the Rights of the Child even if the actual term "the best interests of the child" is not employed, provided those interests are sufficiently promoted and protected. It is possible to achieve the same goals using other terms, for example the "welfare of the child". Further, both welfare and the best interests of the child cannot be perceived to be separate from the welfare or interests of the community.

The Convention and the Declarations of the Rights of the Child

Up to the beginning of the twentieth century, the life of the child had never been considered a matter of interest to the international community. It was solely a family matter, or a matter for local communities or individual countries.

An English children's rights activist, Mrs. Englantyne Jebb, touched by the sufferings of children during the First World War, appealed to the world: Rescue the children! In 1920, the Union international de secours aux enfants was set up. In 1923 the Declaration of the Rights of the Child was issued. On 26 September 1924 the so-called Geneva Declaration was duly adopted by the Fifth Assembly of the League of Nations and the

League became co-ordinator of international co-operation in the field of protection of the rights of the child.

The Geneva Declaration contained five principles. It stated that the child should be given the means necessary for normal physical and spiritual development; that a hungry child should be fed, a sick child cared for, a backward child helped, a delinquent child reclaimed and an orphan or abandoned child given good care; that in the case of disaster the child must be the first to receive relief; that children must be educated and protected against exploitation; and that the child should be brought up with the consciousness that its talents must be devoted to the service of its fellow men.

The Second World War caused much greater calamity than the first. That experience, as well as the fear of its recurrence, could not be disregarded by the United Nations General Assembly. With the fact in mind that the child, because of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth, the General Assembly, by its resolution 1386 (XIV) of 20 November 1959, proclaimed the Declaration of the Rights of the Child to the end that the child might have a happy childhood and enjoy, for his or her own good and for the good of society, the rights set out in the Declaration.

The 1959 Declaration contained 10 principles, developing and enriching the contents of the 1924 Geneva Declaration. Its principles stress that the child should not suffer discrimination; that he should receive every opportunity to develop freely and in dignity; that he should be entitled from birth to a name and nationality; that he should enjoy the benefits of social security. The handicapped child should receive the treatment he requires. The child needs love and understanding and is entitled to education and recreation. He should be the first to receive protection and relief, and he should be protected against all forms of neglect, cruelty or exploitation. He shall be brought up in a spirit of understanding. The Declaration insists on the principle that the best interests of the child should be the guiding principle of those responsible for his education and guidance.

The United Nations has also adopted other conventions and declarations that promote and protect several specific rights of the child; declarations and conventions promoting and protecting the rights of the child have also been adopted by other international organizations such as UNESCO and ILO.

Why then do we need another instrument on the rights of the child? Why is the 1959 Declaration insufficient?

It should be stated first of all that the adoption of the Convention on the Rights of the Child does not annul or minimize the importance of the 1959 Declaration, which will continue as the ideological signpost for States,

for international organizations, for families and individuals and for the international community. The Declaration proclaims certain ideas, values and principles whose importance is permanent. They are embodied in the Convention as well. They are an achievement of the collective conscience of nations. However, the Declaration lacks the binding force and functions as a moral and political document only.

The Convention on the Rights of the Child is the first universal and multilateral international treaty which generally—although not comprehensively, as far as the details are concerned—establishes the internationally recognized rights of the child as a human being. It embraces human rights in a manner appropriate to the special needs of the child. And the Convention will be legally binding for the States which ratify it.

There has never been any international and organized control over the observance of the rights of the child. The Convention provides for and establishes such control. Ratifying States will be obliged to report on the implementation of provisions of the Convention. The reports will be examined by an international body, the Committee on the Rights of the Child. Provisions of the Convention are formulated so as to make review of their implementation possible.

The Declaration of the Rights of the Child is over 30 years old. The Convention is a new and modern document which takes into account the experiences of those 30 years. Its substance is richer than that of the Declaration. It regulates issues omitted or just mentioned by the Declaration, e.g. preservation of the child's identity, privacy, honour or reputation, treatment in criminal cases, rehabilitation, reintegration, etc. The Convention will be a much more effective instrument of promotion and protection of the rights of children than the Declaration.

The Convention adjusts human rights to the situation of children. In particular, it specifies some general provisions of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Thus, the effectiveness of the protection of the rights of the child will be improved. The contribution of the developing countries to the Convention is much greater than it was to the Declaration and other earlier instruments concerning the rights of the child.

The Convention treats the child not only as an object of protection but also as a subject, a person who in the process of growing up also has the right to decide himself about his welfare. Article 12 of the Convention formulates the following principle: A child who is capable of forming his or her own views shall be assured the right to express those views freely; in all matters affecting the child, the views of the child shall be given due weight in accordance with the age and maturity of the child. The same principle has also been explicitly formulated in various other provisions of the Convention.

Article 16 of the Convention stipulates that no child should be subject to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour or reputation. The child enjoys the right to be protected by law against such interference or attacks.

Against discrimination

Discrimination against various categories of people is one of the most painful and unfortunate injustices that exist. It is particularly painful and offensive when it affects human beings who cannot defend themselves effectively, notably young children. This is why the Convention lays such great stress on the protection of the child against discrimination.

Of course, the Convention takes into consideration that each child is different and has his or her own personality and that children vary, which is normal, natural, acceptable and understandable. The Convention opposes all unjust discrimination that may harm the child. The Convention deems harmful and inadmissible any discrimination against children as far as their rights are concerned, on the grounds of their race, colour, sex, language, religion, political or other opinions, national or social origin, material status, birth, or other aspects of status such as disability.

The child is often discriminated against not only, or even not principally, because of his or her own personal situation, but because of that of his or her parents or legal guardians. This is why the Convention in its article 2 obliges the States parties to respect and ensure the rights set forth in the Convention with respect to all children within their jurisdiction without discrimination of any kind and irrespective of the race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, material status, disability, birth or other status of those children's parents or legal guardians. I would like to stress particularly the term "birth". In the light of the Convention, the principle that children have equal rights whether born in or out of wedlock must be taken literally. The States with a monarchical political system opposed this solution. It is clear, however, that the Convention rejects the very concept of the illegitimate child.

Against exploitation

As shown by the data supplied by various reliable international organizations, tens of millions of children still suffer all kinds of exploitation. The Convention protects the child from the most widespread forms of exploitation, that is, economic exploitation, illicit use of narcotic drugs or

psychotropic substances, all kinds of sexual exploitation, abduction, sale of or trafficking in children, and any other form of exploitation prejudicial to any aspect of the child's welfare.

The Convention requires that all States parties should protect the child against economic exploitation and against performing any work that is likely to be hazardous to or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

According to the Convention, the States parties are obliged, in particular, to employ all appropriate measures to protect the child against the illicit use of narcotic drugs or psychotropic substances as defined by the relevant international treaties and to prevent the use of children in the illicit production of and trafficking in such substances. The child shall be protected from all forms of sexual exploitation or abuse. The State should implement every measure, including invocation of international treaties, to prevent the inducement or coercion of the child to engage in any unlawful sexual activity, exploitative use of children in prostitution or other unlawful sexual practices, exploitative use of children in pornographic performances or materials, and abduction or sale of children.

The Convention obliges the States to take all appropriate measures to prevent the abduction and sale of or trafficking in children for any purpose or in any form. Enforcement of the above provisions of the Convention will greatly improve the life of children in all countries of the world.

The definition of the child

The term "child" is ill-defined. In the course of work on the Convention an attempt was made to answer the question, "Who is the child?". The answer contained in article 1 is not precise despite all the lengthy and heated controversies this problem aroused. Unfortunately, for this very reason, the Convention contains just a few novel and original ideas on this matter.

First of all, the Convention does not give an exhaustive answer to the question: "When does the life of a human being begin?" Is it at the moment of conception? Or when the embryo becomes a foetus? Or perhaps even as late as the moment of birth? Owing to the lack of answer in article 1 of the Convention a rather evasive formula has been adopted: "For the purposes of the present Convention, a child means every human being below the age of 18 years . . .". Even though the Preamble does mention the "child . . . before as well as after birth", an analysis of the text of the Convention as a whole indicates that it deals only with the rights of a born child. Legal protection of the rights of a child conceived but not yet born does not fall under the Convention.

Second, the Convention does not define precisely and unequivocally the moment when a child becomes an adult and a mature man or woman. The formula: "... eighteen years unless, under the law applicable to the child, majority is attained earlier" has been used. It appears that agreement could not even be reached as to the basis on which one may speak of a child's having attained majority.

Could legal capacity be treated as such a feature? Or perhaps the capacity to contract a marriage? Or the age of eligibility for military service, or of responsibility under penal law? Or should other criteria be employed? Nevertheless, the definition contained in article 1 does have some cognitive values. It also expresses the will to promote and protect the interests and rights of young human beings until they attain full physical, mental and social maturity and independence.

* * *

To recapitulate, I would like to quote once more the Secretary-General's statement delivered before the General Assembly on 20 November 1989:

> The Convention the Assembly has just adopted constitutes an instrument of far-reaching significance, as visionary as it is timely ... I congratulate members and urge that we move on to make the Convention's principles a living reality for each and every child on Earth. In so doing, we shall not only secure the rights of coming generations; we will also strengthen the foundations of justice, peace and freedom in the world of the future.

As stated in the World Declaration on the Survival, Protection and Development of Children, adopted on 30 September 1990 by the World Summit for Children, the well-being of children requires political action at the highest level. Participants at the Summit made a solemn commitment to give high priority to the rights of children, to their survival, and to their protection and development. They also undertook to work to promote the earliest possible ratification and implementation of the Convention on the Rights of the Child.

There is every reason to hope that the Convention will indeed become, in a short time, an instrument for improving the fate of children in all countries of the world.

The Convention on the Rights of the Child: reaching the unreached?

*Vitit Muntarbhorn**

After a ten-year gestation period, the Convention on the Rights of the Child was born on 20 November 1989. To date, it has been signed by over 100 countries, and it became fully effective in 1990. The Convention consists of 54 articles. Some 40 articles concern substantive rights, while the rest concern mainly procedural matters to facilitate monitoring of the substantive rights. These are the minimum rights which States parties undertake to guarantee for children without discrimination. For all purposes, the best interests of the child are recognized as a primary consideration. The threshold for the differentiation between childhood and adulthood is set at 18 years: by article 1 of the Convention, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

The rights enunciated cover a range of civil, political, economic, social and cultural issues; this inter-disciplinary perspective is the most comprehensive of its kind in international lawmaking. It is precisely this broad context that requires multi-faceted responses, not only in law but also in policy, practice, action and concomitant budgetary allocation to help children and their families world-wide.

Although there are many ways of categorizing the rights stipulated in the Convention, they can be divided as follows:

1. General rights. These include the right to life, prohibition against torture, freedom of expression, freedom of thought and religion, the right to information and the right to privacy.

2. Rights requiring protective measures. These include measures to protect children from economic and sexual exploitation, to prevent drug abuse, and to prevent other forms of abuse and neglect.

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* Associate Professor of the Faculty of Law, Chulalongkorn University, Bangkok; Special Rapporteur to the United Nations Human Rights Commission on the Sale of Children.

3. Rights concerning the civil status of children. These include the right to acquire nationality, the right to preserve one's identity, the right to remain with the parents (unless the best interests of the child dictate otherwise), and the right to be reunited with the family.

4. Rights concerning development and welfare, including the child's right to a reasonable standard of living, the right to health and basic services, the right to social security, the right to education and the right to leisure.

5. Rights concerning children in special circumstances or "in especially difficult circumstances". These apply, *inter alia*, to handicapped children, refugee children and orphaned children and include special regulations on adoption, the cultural concerns of minority and indigenous children and rehabilitative care for children suffering from deprivations as well as a prohibition on the recruitment of soldiers under 15 years of age.

6. Procedural considerations, particularly the establishment of an International Committee of 10 experts to monitor implementation of the Convention. This came into being in 1991. States parties will have to report periodically to the Committee, while non-governmental organizations may also be invited to air their views before the Committee. However, the latter will only have recommendatory powers and will not be able to pass binding judgements upon States allegedly in breach of the Convention.

Reaching the Unreached?

The norms indicated by the Convention are a far cry from the realities facing millions of children in the world today. At times, they are not granted the wherewithal to satisfy their needs; poverty is rampant and prevents them from enjoying their childhood. At times, they are accused, abused and exploited. At times, they are expected to behave and work as though they were adults, even though this may be detrimental to them in the long run. They are compelled to carry an inordinate load by virtue of economic, social and even military necessity, ultimately causing physical and psychological handicaps.

The Convention addresses the special needs of children who at first glance appear to be beyond the reach of protection and development, and whose very survival is in jeopardy. Its various provisions requiring specific measures to help children in difficulty are aimed at various disadvantaged groups, including the following:

Rural children. It is generally known that 70 per cent of the world's population lives in rural areas. These children often do not have sufficient access to services, resources and infrastructure to enable them to realize

their fullest potential. They are increasingly having to yield to economic pressures, and either work in the fields or drift to urban areas in pursuit of work. The disintegration of their families, compounded by the degradation of the environment, is a major barrier to a "normal" childhood; the socio-economic deprivations prevent them from engaging in those activities generally expected of children, notably education and recreation.

The types of social subsidies available to children in rural areas tend to neglect the parallel needs of their families. For instance, the mere fact that one gives a grant to help children go to school does not in fact mean that they will be able to go if the family expects them to till the fields during school hours. Unless there are some provisions to help the family, too, the children will not be able to enjoy their own rights.

Slum and street children. Migrants from rural areas often land up in slums near their newly found workplaces. If a family has moved from a rural area without informing the authorities of its change of residence, they may be unable to obtain the proper papers for the purposes of school enrolment or other official services. In such cases the children may effectively become "non-entities".

The congested environment may lead to family and neighbourhood conflicts. Gambling and drugs are rampant in some slums, while AIDS and inhalant abuse are only a doorstep away. The children themselves may be sent out to work as street vendors or take to the streets, to the detriment of their health and development. While parents are at work elsewhere, the children are often left to their own resources, potential victims of abuse.

Girl children. Although a number of advances can be noted in the promotion of gender equality, there is still an imbalance with respect to the development and protection of girls. Female illiteracy is higher than male illiteracy. While *de jure* discrimination has been eliminated in many parts of the world, *de facto* discrimination on the basis of gender is still pervasive in most societies. The situation is aggravated by cultural stigmas and social taboos which relegate women to a passive and domesticated role governed by sexual stereotypes.

Child labour. Although exploitation of child labour is prohibited in most countries, the practice often violates the law. In many developing countries the minimum working age is set at 12 or 13, lower than the threshold set by ILO *Convention* No. 138, which for most purposes sets the age at 15. The problem is connected to that of the sale of children by parents, sometimes unwittingly, sometimes not. Job placement agencies and their intermediaries are often a conduit for the flow of rural children to urban factories. Prevention of such exploitation is difficult due to poor law enforcement and the limited number of official inspectors, factors which militate in favour of intervention by community-based and non-governmental organizations. On another front, it seems that while some strategies to help child workers do exist, e.g. programmes to take them out of the

exploitative setting and return them to their families, there are still few strategies designed to mobilize the private sector against those who indulge in such exploitation.

Child prostitution. Although child prostitution is generally illegal, it is globally rampant. The worst transgressions are linked to the sale of young girls by their parents on the one hand and the tricking of young girls into the trade by various agents on the other. The situation is particularly invisible in small-scale operations. The laws prohibiting such practices are not implemented effectively; this is sometimes due to collusion between the police and the criminal organizations that control the trade. On another front, the penal approach of many laws in this area fails to deal with the root causes which lie in poverty: they do not provide sufficiently for preventive action, such as social subsidies and family development measures, or incentives to rehabilitate through a change of livelihood.

Handicapped children. A number of handicapped children are marginalized because they have little or no access to basic services. Their school enrolment rate is lower than that of able-bodied children, while ordinary schools lack special facilities for physically handicapped children. In many countries, there is a regrettable tendency to send particularly mentally handicapped children to State institutions without fully exploring family and community networks which may preclude such institutionalization.

Refugee and stateless children. Millions of refugee children world wide are faced with many kinds of discrimination and inhumane action, such as *refoulement* across dangerous frontiers. Many countries regard them as illegal immigrants, and when they are born on the territory where their parents have taken refuge they are rarely eligible for local citizenship, thus giving rise to statelessness. Because they are often seen as illegals without rights in many national settings, their fate is at the mercy of those who regard them as a security threat rather than as children with special needs. Much depends upon international burden sharing if these children are to be helped.

Children in prison. Although the United Nations has set many standards for the administration of justice, e.g. the Standard Minimum Rules for the Treatment of Prisoners, including special protection of children, the practice is still unsatisfactory in many cases. Torture, beatings and the death penalty are applied to the detriment of children and their families. The notion of "juvenile delinquency" is itself open to debate: if the act of delinquency is due to the failure of the family and the community system, one may question the premise that young offenders have to pay for offences attributed to them. A move away from institutionalization and the adoption of more preventive and rehabilitative strategies have yet to gain ground.

Abused and neglected children. The list of abuses and neglect is endless: medically abused children, abandoned children, AIDS-infected children,

child soldiers, etc. Sometimes they are the victims of violence at home, sometimes it is systemic violence that may impair the child both physically and mentally. Although it is difficult to give exact statistics, the known incidence of abused children is sufficient to support the position that the Convention on the Rights of the Child should be complemented by a comprehensive range of actions, utilizing a number of key catalysts.

Challenge

Reaching the hitherto unreached groups requires a committed process of implementing the Convention for the benefit of children and their families. The challenge is daunting for various reasons.

It should be admitted that the Convention itself is a compromise between various interests at play at the international and national levels. Scrutiny of the drafting of the Convention reveals a gamut of State interests depending upon the *quid pro quo* of international diplomacy. This may imply that the standards are too low in some instances, e.g. with regard to child soldiers.

Rampant discrimination, ingrained prejudices and extensive exploitation in many parts of the world will not disappear overnight because of the Convention. The Convention is not an instant panacea. However, it does represent key orientations for multi-faceted action and a commitment on the part of States to take action in the political, economic, social and cultural fields. The words "political will" should not be underestimated.

For some countries, particularly in the developing world, a question arises whether the standards set by the Convention are too high. In the economic and social fields, the Convention tries to overcome this obstacle by stating relative rights, i.e. do the best you can although you will be monitored. This is reinforced by article 4 which calls upon States parties to take measures "to the maximum extent of their available resources". International solidarity is also advanced by the call for measures "within the framework of international co-operation", linking the developing with the developed world. These qualifications should not be a pretext for inaction in relation to children's rights.

A conflict may emerge between children's rights and other people's rights, in particular parental rights. A traditional argument still used in some communities is to press for children's duties rather than rights. In fact, the issue of other people's rights is not neglected by the Convention. For example, in several instances, the Convention recognizes the right of parents to provide guidance in accordance with the child's evolving capacity. What is innovative is that the Convention advances the case for children as independent entities vested with basic rights, not necessarily dependent upon the adults/parents. Where the parents abuse their rights,

children have a right to measures of protection and care, irrespective of the parents.

One should not neglect the cultural nuances that come into play. Religious influences may mean disparities in interpreting the provisions of the Convention. For example, adoption is not recognized as acceptable to certain religions, although it appears as an option to help children in many systems. Freedom to choose one's religion, as stipulated in the Convention, is also impeded by lack of accord on the margin of discretion acknowledged by certain religions. These impediments may lead to reticence on the part of certain States to accede to the Convention and to accept its provisions in its totality. The danger of "cultural relativism" protrudes as a challenge to the internationalization of children's rights.

A related issue is the argument of State rights, embodied in the notion of "public order" and "national security", both of which appear in the Convention as possible restrictions on children's rights. What if children are seen as a threat to those concepts? Unfortunately, this argument appears in several countries where non-democratic elements are at work. From the Convention's viewpoint, children's rights seemed to be recognized as the rule rather than the exception. National security arguments should be cited rarely and should be subjected to close international monitoring.

There may be a conflict between children's rights and the notion of the "best interests of the child". For instance, the child's right to be with the original parents may diverge from an adoption order which is seen as being in his/her best interests. The conundrum is not always easily resolved. In any event, the child's opinion should be accorded great weight in any procedures affecting him/her, as stipulated in article 12 of the Convention. Interestingly, the same article provides room for intervention consistent with national law by third parties, such as non-governmental organizations, on behalf of the child. The balance between rights and interests may have to be established by other third parties, such as judicial review.

There remains the question whether, upon acceding to the Convention, reservations or conditions can be entered by States to limit their obligations under the treaty. By article 51, a reservation incompatible with the object and purpose of the Convention is not permitted. This raises the issue of which reservations are or are not compatible with the treaty. In international law, this is dependent upon the attitude of the existing States parties in relation to the acceding State. The practice that has emerged since the Convention was opened for signature in 1990 suggests that a broad range of reservations has been entered by many States and that these have not been objected to by the other States. This indicates a will to compromise and invite as many States as possible to accede to the Convention, even though the latter may enter many reservations. However, the more reservations are entered to the Convention, the more diluted its provisions become.

Action

A major task for the future will be to ensure implementation of the Convention in the multi-faceted perspective already noted. This will not only depend upon legislative changes to bring national laws into line with the Convention, but also policy, programmes and budgets to create changes at the local level. In this respect, an array of considerations pinpoint the call for further action as follows.

Not only does one need action in favour of children but also in relation to others who have power and influence over children, including the following catalysts:

Parents;

Community;

Non-governmental and community organizations, including religious entities;

Governmental agencies and personnel, including local authorities and law enforcement officials;

Intergovernmental organizations;

The mass media;

The business sector, including employer/employee agencies/unions;

Consumers, e.g. customers of the sex trade.

Both the demand and supply factors have to be tackled, yet there is currently a shortage of strategies to deal with some of the groups mentioned, particularly from the demand angle. Conversely, there are those who belong to the groups in question who may be identified as potential partners in preventing and eradicating abuses against children, e.g. honest policemen and the members of the private sector which deal with community development. Incentives need to be provided to build a broader alliance between all the catalysts for the purpose of protecting children.

Various agencies have offered slogans to propel action in implementing the Convention. These include "Survival, Protection and Development" (UNICEF) and "Prevention, Provision, Protection and Participation" (Save the Children Fund). These main elements may be broadened in the following manner:

Prevention, including ways to alleviate poverty (e.g. satisfaction of basic needs such as shelter, nutrition and health) and prevention of the abduction and sale of children;

Protection, including advocacy and pressure against discrimination, against interference in the child's privacy and family, and measures against exploitation, abuse and neglect, e.g. sexual exploitation and child labour, complemented by law and policy reform where necessary;

Provision, including provision of basic services in education, rehabilitation and access to culture, recreation and leisure;

Participation, enabling the children themselves to participate as much as possible in realizing their rights and in shaping their interests;

Development, encompassing comprehensive measures to foster the total realization of the child's potential consistent with his/her environment;

Evaluation, entailing monitoring and appraisal of policies and practices concerning children, supplemented by quality of life indicators (of well-being and ill-being) and follow-up action;

Intervention, particularly empowerment of third parties such as non-governmental organizations, which can help to represent the interests of the child;

Accountability, ensuring access to remedies and concomitant responsibility towards children's rights, ranging from use of the judicial system to extra-systemic means such as community watch and family mediation;

Rehabilitation, particularly to help families and children to adjust their ways so as to lead a better life, including socio-medical counselling and subsidies to promote family cohesion;

Dissemination, comprising not only dissemination of children's rights in the formal schooling system but also more effective use of the mass media and non-formal education so as to raise the level of children's rights and knowledge of places where help is rendered to needy cases.

National planning agencies vested with the task of preparing State policies concerning development should explore the above constituents in greater depth, and commit resources on a longer-term basis to ensure child development and protection. This is related to such sensitive issues as poverty alleviation, income distribution, resource reallocation, equity decentralization and rural development, all of which have great bearing on the destinies of disadvantaged families. Child programmes need to be complemented by family programmes so as to prevent social disintegration and displacement. Child and family development needs to be integrated into the operationalization of all ministries in a complementary fashion.

Where possible, there should be a national/local committee to monitor the situation of children's rights with the capacity to prepare reports on the status of children and to mobilize resources to overcome abuses against children. This should be the case even in countries that have not acceded to the Convention.

The role of non-governmental organizations is already recognized as highly contributive to children's rights and it should be maximized in future. In countries that have not yet acceded to the Convention, these

organizations can help to monitor children's rights and promote greater respect thereof. For countries that are parties to the Convention, there are at least two levels of intervention possible: internationally, by means of providing information to the Committee on the Rights of the Child; and nationally, by means of pressure for responsible and responsive State policies and action, with proper data bases to help monitor the situation.

Innovative and pro-active programmes should be encouraged to reach the unreached, e.g. to take schools on to the streets to be with the street children and to gain access to child prostitutes and workers by means of community watch, with the provision of hotlines and mobile services to respond to appeals for help. Likewise, action should be taken to enhance the role of the private sector in respecting children's rights, e.g. by means of labels showing that the products have not been produced as a result of child labour, and private sector guidelines and monitoring against abuses committed by other members of the private sector.

Evidently, although the issue at hand is children's rights, there is an intricate tapestry of interests, programmes and catalysts that need to be capitalized upon. It is through this burgeoning nexus that the unreachable will be within our grasp.

The United Nations Convention on the Rights of the Child

*Marta Santos Pais**

1. After lengthy discussion and considerable reflection by the working group on a draft convention on the rights of the child, the Convention on the Rights of the Child was adopted on 20 November 1989 by the United Nations General Assembly.[1] It was a red-letter day that had been preceded 30 years earlier by the adoption of the Declaration of the Rights of the Child[2] and 10 years earlier by the International Year of the Child.[3]

2. This Convention naturally reflects a compromise between various legal systems and different philosophical concepts and has drawn upon a multiplicity of cultures and traditions, while at the same time respecting generally-recognized principles of human rights.

It also constitutes a genuine charter of the rights of the child, because it has assembled in a single text a number of standards and principles that are contained in international legal instruments concerning children. The Convention thereby highlights two aspects—the child as the *holder* of fundamental rights and freedoms and the child as the *recipient* of special protection—designed to ensure his harmonious development as an individual and help him to play a constructive role in society.

Furthermore, for the first time in the history of United Nations standard setting, the Convention reaffirms the spirit of complementarity and interdependence of human rights advocated by the Universal Declaration of Human Rights by combining civil and political rights with economic, social and cultural rights. It is, moreover, noteworthy that it was that same spirit which prompted the framers of the Convention to refrain

* Adviser, Department of Documentation and Comparative Law, Ministry of Justice of Portugal.

[1] General Assembly resolution 44/25.

[2] Resolution 1386 (XIV), of 20 November 1959.

[3] Resolution 31/169, of 21 December 1976.

from establishing any inventory of these rights, thus avoiding the temptation to list them in order of importance and underlining the fact that each one was inherent in the child as a human being.

3. The merit and importance of this Convention are undoubtedly reaffirmed both by the unprecedented number of signatures and ratifications that it has obtained and by its prompt entry into force, less than a year after its adoption by the General Assembly.

Further evidence of its value and importance has been the very wide geographical distribution of the States which have become parties to it. They are situated in all continents and have thus demonstrated that they are united in the common task of speeding up social progress and creating better living conditions in the context of greater freedom, through the implementation of a system for promoting and protecting the rights of the child.

4. The Convention on the Rights of the Child naturally incorporates some of the fundamental ideas advanced in the Declaration of the Rights of the Child of 1959, which in turn had drawn upon the principles of the 1924 Declaration adopted by the League of Nations.

But the innovative feature of the Convention is that it has added the notion of constraint, by establishing a general obligation for States parties to respect the rights set forth in the Convention and to guarantee them to each child without discrimination (art. 2).

To this end, the States parties undertake to adopt all appropriate measures for the implementation of the rights recognized in the Convention. Those measures may be legislative, administrative or of any other kind (art. 4),[4] and are required to ensure the harmonious development of the child in a context of happiness, love and understanding.

5. In the light of other instruments adopted by the United Nations, the Convention recognizes that the child needs special protection, and justifies positive action by the parents, institutions or the State. This is the purpose of the provisions concerning situations where the child is deprived of the family environment, is subjected to exploitation or violence, or those concerning the right to health, social security or an adequate level of living.

At the same time, however, the Convention regards the child as *principal* and emphasizes his rights and freedoms such as the right to express his views freely (art. 12), to receive and impart information (art. 13), to freedom of association and freedom of peaceful assembly (art. 15).

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[4] See for example the social and educational measures listed in articles 19 and 32.

Furthermore, the Convention underlines the fact that the *best interests of the child* should be a primary consideration in all decisions concerning him, and calls upon public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (art. 3) to act accordingly.

The best interests of the child, in this sense, represent a goal to be pursued in implementing his rights, and not only serve to delimit the activities of all those who contribute to his development but also constitute a criterion to be taken into account in settling any possible conflict between various interests—such as, for example, in a conflict between the child and his family or between the child and an institution responsible for his care.

The best interests of the child will also constitute a criterion to be taken into account in the event of a conflict between a child's various rights, as where the ill-treatment of a child by his parents justifies his being separated from them (art. 9). Or conversely, in the event of the administrative detention of the family under immigration laws, where the child deprived of his liberty remains with his parents in the place of detention, contrary to the general principle according to which children deprived of their liberty should be separated from adults (art. 37).[5]

6. The Convention on the Rights of the Child is intended to ensure for every child, without any distinction, a set of fundamental rights that will thus constitute minimum protection, reflecting feasible compromise and not the ultimate goal.

On the one hand, the Convention does not, of course, establish a single, exhaustive list of the rights of the child—it is in that spirit that article 45 provides for the possibility of undertaking studies on the rights of the child[6] and that article 50 deals with the question of amendments.

On the other hand, a safeguards clause has been included, requiring that the provisions applied should always be the ones most conducive to the realization of the rights of the child, which may be contained in the national legislation of a State party or in the international law in force for that State (art. 41).

7. The Convention, as has been noted above, has assembled the various principles and rights relating to the child and advanced by various international instruments into a real charter.

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[5] This principle has, moreover, recently been reaffirmed by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

[6] It is noteworthy that, even before the Convention came into force, two studies were carried out under the auspices of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the participation of children in armed conflicts and trafficking in children in connection with international adoption.

It has thereby facilitated access to these rights, making them more effective and widely known to adults and children alike, as is stated in the text of the Convention itself (art. 42). Furthermore, an opportunity has been offered to all States—even those which are not parties to the international instruments that gave rise to the Convention—to accede to it and to assume an international undertaking to implement its principles.

Yet the Convention is not simply a repetition of generally-recognized principles and rights. Quite the contrary, it has been innovative in certain areas, tackling new issues and developing principles established by international practice.

8. This innovative approach is no doubt apparent in the recognition of the right of children to express their views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity, especially in any judicial and administrative proceedings affecting them (art. 12).

This principle, moreover, complements article 5 of the Convention, which deals with the responsibilities, rights and duties of parents (legal guardians or other persons legally responsible for the child) who are required to provide appropriate direction and guidance to the child in a manner consistent with his capabilities.

But, although the laws of several countries already reflected that concern, the principle itself had not been established in international law. And yet that principle is of decisive importance in a legal instrument that is precisely intended to emphasize the fact that the child has rights, and to permit his active and responsible participation in a free society.

9. However, while recognizing that the child should be brought up in a spirit of peace, dignity, tolerance, freedom, equality and solidarity, the Convention also stresses the right *to rest, leisure, to engage in play and recreational activities appropriate to his age* (arts. 29 and 31) which States should not only respect but also promote through the organization of such recreational and leisure activities.

And, although at first glance this requirement might simply be construed as the obvious corollary of the harmonious development of the child's personality advocated in this international instrument, it is enough to reflect on tragic cases of the exploitation of child labour to realize how valuable and topical this provision is.

Article 31 also covers the right to free and full participation in cultural and artistic life on the basis of equal opportunity.

In that connection, the provisions dealing with access to information take on particular importance (arts. 13 and 17). They assert the right of access to information and at the same time recognize the decisive role that can be played by the *media*, a point that had not been highlighted so clearly in previous international instruments.

But what is even more important is that the Convention expressly provides that States should encourage the production and dissemination of *children's books*. Not only books that are important for their education, such as those to improve their social, spiritual or moral well-being but also books that offer them distraction and relaxation, encourage them to dream, foster their creative spirit and develop their sensitivity.

10. The Convention further deals with the issues of foster placement and adoption abroad, defines the legal framework within which this should be effected and establishes safeguards permitting the identification and prevention of traffic in children, which is so often associated with foreign adoption (see arts. 21 and 35).

The United Nations General Assembly had admittedly, in resolution 41/85, already adopted the "Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally". However, as it was only a declaration, the text simply offered basic guidelines and set out the principles to be taken into account and, because it was binding, it was not a source of obligations for States.

Although articles 20 and 21 stated that it was desirable to ensure continuity in a child's upbringing and to take into account his ethnic, religious, cultural and linguistic background, they offered different solutions: placement within the natural family, in the country of origin or—as a last resort—adoption abroad.

Since the Convention provides for this eventuality, it has been possible to define and establish a mandatory framework for action by the State which, in the light of article 4, is required to take all appropriate measures to ensure that the best interests of the child will be the *primary consideration* in seeking the best solution to his integration in a foster home.

The Convention accordingly sets out a number of very important elements to ensure that adoption abroad, in the event that this procedure is used as a last resort, constitutes *a real solution for the child*, guaranteeing the harmonious development of his personality and taking into account his opinion, depending on his maturity. Adoption does not therefore constitute a simple solution for the parents or possible intermediaries motivated by commercial considerations.[7]

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[7] A number of studies have, in fact, revealed situations where adoption abroad is regarded as a good solution for the parents—either natural parents who, living in extreme poverty and realizing that they cannot offer their child anything, give it up or sell it in the hope of giving it a golden future, or adoptive parents who are often childless and whose parental instincts become blended with an altruistic desire to contribute to the well-being of someone who is hopelessly disadvantaged and needy by offering him an environment that is a far cry—economically, socially or culturally—from his own.

But, quite apart from the "second-best" nature of adoption abroad, what has to be taken into account is whether the child meets the conditions for adoption, in other words, whether his legal status permits or makes recourse to such a solution advisable—for example, if the child has been abandoned—whether the consent of the parents (legal guardians, relatives) or of the child himself, if he is old enough, has been given in full knowledge of the facts and on the basis of appropriate counselling and information.

This question naturally implies the consideration of a host of psychological, sociological, economic and social factors to which special attention is given at the national and international governmental or non-governmental levels, using the lessons learned from the experience of certain regions of the world in an effort to elaborate upon the legal principles which the Convention on the Rights of the Child has rightly advanced.[8]

11. The Convention has also made some innovations, which are reflected in articles 37 and 40, affecting the administration of justice.

Taking as the point of reference the Beijing Rules on the administration of juvenile justice, a set of principles of undeniable importance has been formulated to protect the child under a system which is traditionally recognized as being complex and unyielding, and which admits of solutions with far-reaching implications such as the deprivation of liberty or, under some legal systems, life imprisonment or the death penalty.

The intention was to reconcile two vital interests, namely respect for human rights and the legal guarantees that are the right of every human being, and consideration of the specific needs of the child, because of his age, the gradual development of his personality and the desire to help him become an active and responsible member of society.

In this part, the fundamental features of the Convention are respect for human dignity, respect for privacy, the importance of the family's support and the consideration of mechanisms that cater specifically for minors.

In the light of these principles, the Convention prohibits torture, the imposition of the death penalty or life imprisonment without possibility of release. In addition, the deprivation of the child's liberty has been considered as a measure to be taken as a last resort and should be as short as possible (art. 37 (*a*) and (*b*)).

And in cases where, notwithstanding these restrictions, the deprivation of liberty, by arrest, detention or imprisonment appears to be justified,[9] the State party should ensure that the child (art. 37 (*c*) and (*d*)):

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[8] In this framework, great store is set by the work being done by the Hague Conference on Private International Law which is drafting a convention on this subject.

[9] In drafting this article the General Comment made by the Human Rights Committee on article 9 of the International Covenant on Civil and Political Rights was of crucial importance because it was considered applicable to all forms of deprivation of liberty, in criminal cases or in cases of the mentally ill, vagrants, drug addicts or illegal immigration.

Is treated with humanity and taking into account the needs of persons of his or her age;

Has the right to maintain contact with his or her family through correspondence, save in exceptional circumstances, for example if it is considered in the child's best interest not to do so;

Has the right to legal assistance which is of fundamental importance in order to challenge the legality of deprivation of his or her liberty, as well as any kind of appropriate family, psychological, humanitarian or other assistance.

On the subject of guarantees of defence the Convention specifies the right to a fair trial, and strengthens that requirement by indicating the measures that should specifically be taken into account in considering cases involving minors.

In that spirit, States are called upon to adopt less formal and rigid measures in dealing with children who have infringed the penal law, and to ensure that fundamental human rights and legal safeguards are respected (art. 40, para. 3 (*b*) and para. 4).

Furthermore, the privacy of the child must be fully respected at all stages of the proceedings, and any information concerning him must be kept confidential.[10]

The family—namely, the parents or legal guardians—is also recognized as having an important role to play. This concern is reflected in the fact that the child may be informed of the charges against him through his parents or legal guardians (art. 40, para. 2 (*b*) (ii)).

Another example is that the parents (or legal guardians) are allowed to be present when the case is heard, unless it is considered not to be in the best interest of the child (art. 40, para. 2 (*b*) (iii)).

This concern is again reflected in the provision which states that the child shall have not only legal assistance, but any other appropriate assistance in the preparation and presentation of his or her defence and that such assistance, as has already been noted above, could in fact be assistance from his family (art. 40, para. 2 (*b*) (ii)).

In our opinion, the fact that these principles are reflected and developed in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which were recently adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, can only serve to reassure us about the validity of the approach adopted in the Convention.

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[10] It should be pointed out that, in providing for cases to be heard by a competent, independent and impartial authority or judicial body, reference is made to a fair, but not to a public, hearing, as was done in the International Covenant on Civil and Political Rights (art. 14, para. 1).

12. A discussion of many others of the Convention's provisions could certainly be justified as they will certainly benefit from its forthcoming implementation.

However, for the moment we would like to draw attention to the importance attached to the dissemination and understanding of its contents by adults and children, as a guarantee of its effective application (art. 42). It is not unusual that this point should have been stated so explicitly at the beginning of part II of the Convention dealing with its implementation.

The same idea lies behind article 44, paragraph 6, under which States are required to ensure that the report they submit to the Committee on the Rights of the Child, indicating the measures they have adopted to give effect to the rights recognized in the Convention, are made widely available to the public in their own countries.

This is, in effect, an invitation to adopt a policy of transparency and dialogue which will certainly lead to greater awareness by all those who can help to strengthen the protection of the rights of the child, by making available a complete picture of the current situation, the progress achieved, the difficulties encountered and possible solutions.

13. The efforts made during the lengthy debate that preceded the adoption of the Convention to overcome difficulties encountered during the negotiations and uncertainty about the impact the instrument would have after it was adopted have been duly rewarded by the wide acceptance it enjoys today.

The obvious importance of this legal instrument is reflected in the unprecedented number of ratifications notified during the short period since its adoption and confirmed by the succession of information and training meetings held at the national and international levels in the various regions of the world.

Its importance was further emphasized by the recent World Summit for Children held in New York, which made an important and solemn pledge to guarantee to every child the right to a childhood of peace and joy, time to play, to learn and to grow up, as well as to recognize the priority to be given to his rights, his survival, protection and development.

As stated at the Summit, there is no nobler task than that of ensuring a better future for every child. Let us not wait until tomorrow to start!

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